

International Development Research Centre

LINKING THE
PRINCIPLES OF
HUMAN RIGHTS,
EQUITY IN NATURAL
RESOURCES USE
AND ENVIRONMENTAL
SUSTAINABILITY

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***LINKING THE PRINCIPLES OF HUMAN RIGHTS, EQUITY IN NATURAL
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Linking the Principles of Human Rights, Equity in Natural Resources Use and Environmental Sustainability

Allan McChesney, Consultant to IDRC, November 1998

EXECUTIVE SUMMARY

A: Background

Among IDRC's areas of expertise and focus are environmental sustainability and equity in natural resources use. In a number of legal, political and theoretical developments internationally, these areas have been linked with concepts of and promotion of human rights. The report surveys conceptual and legal bases for the view that respect for human rights fosters realization of environmental sustainability and equity in natural resources use, and that the principles of equity in natural resources use and sustainability support human rights aims. The consultant suggests that IDRC's work is human rights-positive, though IDRC programs and projects are not often described in human rights language. Relevant IDRC activity occurs with respect to equity for women and for indigenous peoples, natural resources management, biodiversity conservation, ecosystem and environmental security, preservation of traditional knowledge, peacebuilding and participatory governance.

In addition to summarizing germane elements of treaties, declarations and other instruments in the field of human rights and sustainable development, the study offers five Case Illustrations. These demonstrate how courts and international expert bodies join concepts of human rights, resource equity and environmental responsibility when reviewing complaints of violations.

The report does not cover all of IDRC's ambit. It touches on human rights issues pertinent to equity in natural resources use, the environment and related sustainability concerns. The study is intended for internal IDRC circulation and discussion; it makes occasional reference to elements of IDRC projects that illustrate concepts covered in the paper. The report concludes with proposals for follow-up IDRC research.

B: An Introduction to International Human Rights

B.1 International Instruments (Treaties and Declarations)

As groundwork for showing the relationship between human rights principles and certain IDRC themes and priorities, the essay looks at international human rights law. The focus is on rights proclaimed by the United Nations in the *Universal Declaration of Human Rights* (1948) and in major rights instruments derived from it.

There are two major branches of human rights. Among the civil and political rights are these that are more relevant for IDRC purposes: the right to life; freedoms of thought, opinion, expression, movement, association and assembly; equality before the law; personal liberty and security; rights of minorities; and the right to take part in the conduct of public affairs.

Economic, social, and cultural rights include: adequate food, housing, health and education; an adequate standard of living for self and family; safe and healthful working conditions; participation in the cultural life of the community; and the right to benefit from scientific progress and from one's own creativity.

Neither set of rights has primacy; all the rights are interdependent and should be enjoyed together. The main monitoring mechanisms for treaties that guarantee these rights are: self-reporting by countries to UN expert bodies; alternative submissions conveyed to the same UN bodies by non-governmental organizations (NGOs); and published observations from the expert bodies. This enforcement model is used for the two core treaties that reinforce virtually all rights found in the *Universal Declaration*, i.e. the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Similar approaches are taken for supervision of UN treaties that elaborate the rights of children and of women, respectively, and against racial discrimination.

Regional organizations of Africa, Europe and the Americas have adopted human rights instruments. With some variation, these regional instruments tend to echo the *Universal Declaration* and the UN Covenants.

B.2 Equity and Non-Discrimination

B.2.1 Non-Discrimination: Prohibition of discrimination is a central value of human rights law. The *Universal Declaration* recognizes that "All human beings are born free and equal in dignity and rights". UN instruments ensure rights to everyone without discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The *Convention on the Rights of the Child* also prohibits discrimination on the basis of disability. There are additional rights for minority and indigenous groups.

B.2.2 Gender Equity: Women are guaranteed equal rights by UN and regional human rights instruments. Women's empowerment and successful human development are aided by the fulfilment of women's human rights, including participatory and educational rights. Full participation of women in planning, management and implementation of development assists environmental and resource equity goals. In personal and occupational spheres, women have human rights concerns linked to environmental safety and equity in resource use; among relevant areas are land use and ownership, modes of food harvesting and production, educational and occupational opportunities, problems faced by women and girls in working situations and reproductive and preventive health care.

B.3 The Right to Development

The *Declaration on the Right to Development* is important politically in UN circles and was one basis for reorganizing UN human rights programs in early 1998. The Declaration links older human rights norms in the "right to development" by virtue of which everyone is "entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized". Article 8 stresses "popular participation in all spheres as an important factor in development and in the full realization of all human rights".

C: The Exercise of Civil and Political Rights and Equitable, Sustainable Development

Civil and political rights are guaranteed in the *Universal Declaration*, the *International Covenant on Civil and Political Rights* and regional human rights instruments.

C.1 Participatory and Procedural Rights

Exercise of universal rights such as access to information, freedoms of opinion and expression, and the right to participate in democratic and public affairs assists in environmental activism and in advocacy for sustainable development and equity in resources use. Disadvantaged groups - including women, those dispossessed of their lands or territories, and traditional communities who depend on natural resources - need a meaningful role in decision-making on resource and environmental management. Participatory rights are essential for this purpose. Court actions on human rights grounds can also assist environmental and resource equity causes, by preventing damage or by obtaining a remedy for an individual or a community.

Denial of human rights, e.g. suppression of public information and debate, can contribute to greater environmental damage and inequity, as occurred with the Chernobyl and other disasters. Inequity and harm to the environment is frequently accompanied by targeting of activists such as Ken Saro-Wiwa, Chico Mendes and Wangari Maathai.

C.2 Employing the Language of Civil and Political Rights

Much of what IDRC supports involves the exercise of human rights for environmental and resource equity objectives, though projects are rarely framed in human rights terms. Human rights arguments can reinforce other public interest objectives and actions, especially in a country bound by human rights treaties, and where the government portrays itself as respecting human rights. For example, one can say that the right to information includes the right to be informed of environmental risks; and the right to participate includes the right to be active in decision-making on environmental issues and on matters of resource use.

Awareness of principles that can assist in achieving sustainable development or equitable use of resources does not always mean that one can or should act on the knowledge. In many countries and circumstances it is dangerous to frame human rights goals in the overt language of human rights and democracy. In such situations, reference to good development practices, fairness and dignity may be more prudent. Those who promote human rights and sustainable human development objectives must judge which mix of approaches is likely to succeed in a given society and time.

C.3 The Right to Life

Although the right to life is a civil right, it is often conceptually tied to economic and social rights like the rights to health, food, housing, and an adequate standard of living. These in turn can be linked to environmental safety and to equity in the use of natural resources.

D: Property Rights, Indigenous Rights and Minority Rights

D.1 Property Rights and Self-Determination of Peoples

The *Universal Declaration* proclaimed a right to own property, but this was not enshrined in the two UN Covenants. Negotiators could not agree on the appropriate balance between private property rights and rights to use property for the public good. The UN Covenants do guarantee a collective right of peoples to pursue their own development, "to dispose freely of their natural wealth and resources", and to have their own "means of subsistence". This right of self-determination has evolved. Once an anti-colonial concept, it now focuses mainly on autonomy for ethnically-distinct peoples within an intact country, including freedom to pursue independent economic, social and cultural activities.

D.2 Indigenous and Minority Peoples' Rights

Fairness in natural resource allocation demands respect for the spiritual and livelihood practices of indigenous and other tribal peoples, often tied to interaction with nature. The right to participate in the cultural life of one's community may require preservation of the physical environment upon which a culture depends. The *Convention on the Rights of the Child* guarantees the right of an indigenous child or one from a minority to enjoy his or her own culture, in community with other members of the group.

Two UN instruments call for governments to work with indigenous peoples to protect their territories, environments and traditional ways of life, and to safeguard their rights in connection with natural resources: *International Labour Organization Convention 169, Concerning Indigenous and Tribal Peoples in Independent Countries* and *Draft Declaration on the Rights of Indigenous Peoples*. The latter document has not been finalized. Nor has a like-minded statement drafted within the Organization of American States, the *Proposed American Declaration on the Rights of Indigenous Peoples*.

Key concepts covered by the three instruments include: safeguarding the institutions, property, cultures and environment of indigenous and tribal peoples; honouring of traditional procedures for transmitting land rights; safeguarding rights to use lands to which a people traditionally had access for subsistence and customary activities; the right to a degree of control over development affecting lands, institutions and well-being; the right to participate in the management and conservation of natural resources; protection against forcible removal from lands and territories; a right to traditional medicines and health practices; and, in the draft *American Declaration*, "ownership, control and protection" of "cultural, artistic, spiritual, technological and scientific heritage" and legal protection for intellectual property, including "seeds, medicine, knowledge of plant and animal life, original designs and procedure".

E: Realization of Economic, Social and Cultural Rights and Equitable, Sustainable Development

Economic, social and cultural rights ("social rights") are guaranteed in the *Universal Declaration*, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and regional human rights instruments. While the exercise of civil and political rights empowers efforts to protect the environment and the quality of life, competing groups also use procedural human rights. The existence of environmental or resource entitlements may not assist disadvantaged groups unless they have the stamina and economic and educational capacity to generate preventive action or remedial measures. The fulfilment of social human rights to health, education and an adequate standard of living thus furthers environmental ends and promotes equitable use of natural resources. Some social rights either directly refer to environmental or resource issues or have been interpreted to include environmental and resource equity considerations.

E.1 Environmental Concerns and the Rights to Health, Food, Water, Housing and an Adequate Standard of Living

The ICESCR and the UN *Convention on the Rights of the Child* (CRC) both require countries to promote everyone's health through attention to environmental and industrial cleanliness and safety. The *Universal Declaration* and the ICESCR provide a right to favourable conditions of work, elaborated in the ICESCR to include safe and healthful conditions. Courts in Europe and Asia deciding important recent cases on the right to health have balanced personal health rights and community economic rights to favour the former.

The *Universal Declaration* proclaims "the right to a standard of living adequate for the health and well-being" of oneself and one's family, "including food, clothing, housing and medical care and the necessary social services..". To implement the child's right to the highest attainable standard of health (CRC), States must ensure "adequate nutritious foods and clean drinking-water". The right to health in the ICESCR includes reduction of infant mortality,

improvement of environmental and industrial hygiene and control of "epidemic, endemic, occupational and other diseases". To fulfil these obligations for everyone, without discrimination, the consultant believes that a State must pay serious attention to environmental and resource equity issues. For example, where people have inadequate food and lack the capacity to feed themselves, the State must intervene, either by providing food or by ensuring to people the means to obtain it or grow it. Such intervention could involve better access to land, water and other resources.

E.2 Right to Education

The *Universal Declaration* and the ICESCR call for primary education for all, and gradually increasing access to higher education. The ICESCR and CRC say that education must strengthen respect for human rights and equip everyone to participate in a free society. The CRC requires that information be furnished to "all segments of society" to encourage "environmental sanitation and the prevention of accidents". Implementation of these rights to education can help to raise environmental awareness and to equip groups with skills to combat ecological damage and inequity.

E.3 Right to Benefit from Scientific Progress

The Universal Declaration and the ICESCR provide that everyone has the right to share in scientific advancement and its benefits and to protection of the interests resulting from scientific innovation of which she or he is the author. This right has implications for intellectual property rights, recognition and preservation of traditional knowledge, and protection of minority and indigenous peoples' rights.

F: How Sustainable Development Principles Encourage Realization of Human Rights

A number of international accords link sustainability and human rights principles; environmental protection and equity in resource sharing are in harmony with human rights objectives. In contrast, acts of public authorities or corporations that cause environmental degradation or cut resource access for a vulnerable group may be discriminatory and can lead to contravention of human rights such as the rights to life or health. Effective environmental protection helps to ensure the well-being of future generations and the survival of people who depend on natural resources for their cultures and livelihoods.

F.1 Sustainable Development Declarations and Human Rights

The *Stockholm Declaration on the Human Environment* (1972) proclaimed the right to "freedom, equality, and adequate conditions of life in an environment that permits a life of dignity and well-being" and a "responsibility to protect and improve the environment for present and future generations". In different language, the 1992 *Rio Declaration (Rio)* and its accompanying *Agenda 21* also connect sustainable development and human rights ideas.

Rio supports the rights to life and health, stating that human beings are at the centre of concerns for sustainable development and are entitled to a healthy and productive life. *Rio* adds that developmental and environmental needs of present and future generations must be met, "equitably". States are told to curtail activities and substances that cause severe environmental degradation or are harmful to human health. Principle 5 calls for eradication of poverty and a decrease in disparities in living standards. In addition to social rights, *Rio* highlights rights to public participation in environmental decision-making, access to information on the environment, and access to adequate remedies.

Rio affirms the need for full participation of women in environmental management and sustainable development. It stresses the knowledge and vital roles of indigenous people and local communities for environmental management and development, demanding that States support their culture and interests and enable their effective participation in sustainable development. Principle 23 adds that: "The environment and natural resources of people under oppression, domination and occupation shall be protected".

G: Is There a Universal Human Right to a Safe and Sound Environment?

The *Stockholm Declaration* proclaimed rights to "freedom, equality, and adequate conditions of life" and "an environment that permits a life of dignity and well-being". This foundation has not developed into a universal human right to environmental integrity. Many Constitutions and a few regional instruments proclaim variants of a right to "a generally satisfactory environment" (African Charter), or one "suitable for the development of the person" (Portugal). These environmental rights tend not to be readily enforced or enforceable.

Two indigenous peoples' rights instruments declare environmental human rights. The *Proposed American Declaration on the Rights of Indigenous Peoples* states: "Indigenous peoples have the right to a safe and healthy environment, which is an essential condition for the enjoyment of the right to life and collective well-being.". The UN *Draft Declaration on the Rights of Indigenous Peoples* adds resource equity terms: "Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources...".

Imagining a universal human right to environmental purity seems like dreaming of green pie in the sky. A global right to a safe sustainable environment, or an analogous formulation, would help activists to gather support on environmental and resource equity issues. Yet any general right would face monitoring and enforceability problems, including divergent perceptions of desirable environmental qualities.

H: Differing Views on International Human Rights

H.1 Are Universal Human Rights "Western" and Inappropriate for the South?

States shield themselves from criticism on human rights grounds, but a few do so on the basis that the notion of universal human rights is itself flawed. Some governments of the South present Asian, Islamic, African and communal "values" (as well as national sovereignty) as reasons to dismiss international human rights standards and scrutiny. Critiques note that there are democracy and human rights activists from the same regions who hold values that encompass universal human rights.

The vast majority of governments have participated in the formulation process for, and/or ratified, the major human rights treaties. Countries do not like to admit that they deny or oppose human rights. States with bad human rights records rely on international human rights law to criticize rivals. Yet during the 1993 Vienna World Conference on Human Rights and since, authoritarian States have played up cultural divergence and stressed individual duties to society. In contrast, at Vienna and in other settings, NGOs have supported human rights as universally applicable. A high degree of consensus on universality was expressed by NGO representatives from around the world in June 1998 at the Vienna+5 Forum in Ottawa.

Cultural relativists argue that: human rights are Western, with limited resonance in other cultures; there is no universal conception of human rights; and the concept of individual rights is meaningless in many societies where the individual has a defined role only within a group. Yet cultures evolve, and relativist arguments are convenient for those who wish to protect their own power and interests. The human rights of traditional tribal or indigenous groups are often violated by larger societies. Around the world, people are increasingly individualized and need protection against States that use modern tools of control.

It can be contended that the dignity and equality of all people, and other values underlying human rights, have roots in virtually every culture, civilization, religion and philosophical tradition. Human rights champions from the South search for ways to reconcile their religions or cultures and international human rights. Even as they do so, these scholars and activists need to derive some protection from the existing international standards and machinery. In working for greater cultural legitimacy of universal human rights within their own traditions, their efforts challenge powerful interest groups.

In the 1990s, world conferences have addressed themes of human rights, population, environment and development, social development, and gender equity. In pronouncements from these conferences, governments have consistently endorsed by consensus the notion that human rights belong to all humans, everywhere. Most States from every region, from the broad political spectrum, participated vigorously in negotiating these accords. The outcomes

of the world conferences add weight to the principle of human rights universality, but as contrasting views noted here have shown, international human rights law is a fluid discipline.

H.2 Are Social Rights Really Rights?

Some Western thinkers say that economic and social rights are needs or desires, and that calling them human rights may weaken individual liberties. Yet in consensus statements from world conferences of the 1990s, democracies with free markets, as well as authoritarian capitalist, communist and religious regimes agreed on the equality of economic, social, civil, political and cultural rights. The UN Centre for Human Rights (now the Office of the High Commissioner for Human Rights) has reorganized with an emphasis on the "right to development", a concept that depends on the interdependence of all human rights.

I: Tensions Among Environmental, Sustainable Human Development and Human Rights Objectives

The objectives and priorities of different human rights, equity in resource use and environmental sustainability are not always in harmony. Many customary practices are significantly harmful for women, children or minorities, involving incompatibility between culture and human rights as well as tensions between group human rights and individual human rights. Immediate economic and survival interests for people can displace concern for the needs of future generations. On the other hand, if the human rights to health, food and property are fulfilled for the majority, depredation of natural resources could result.

Supporters of ecotourism may conflict with groups for whom interaction with nature is essential to traditional livelihoods and cultures. Ideally, interests can be balance through participatory processes, but justice may demand that the human rights of one side trump the economic and/or environmental interests of the other. Human rights priorities would usually favour protection of the practices of minority or indigenous peoples over newer economic interests. That result will often be consistent with preservation of biodiversity. There are exceptions, such as when customary agricultural practices, abetted by new technology, cultural change, economic change and local population increases contribute to forest destruction, coastal or soil erosion or desertification.

J: Recent Initiatives Linking Sustainable Human Development, Equity in Natural Resources Use and Human Rights

J.1 Draft Declaration of Principles on Human Rights and the Environment (DHRE)

In 1994, international experts framed a *Draft Declaration of Principles on Human Rights and the Environment* (DHRE), guided by a concern that "human rights violations lead to environmental degradation and environmental degradation leads to human rights violations".

DHRE was published in 1995 by the UN Commission on Human Rights, and remains a focus for education and inspiration, but there is no momentum toward adoption of a final Declaration.

DHRE proclaims that all persons have the right to a secure, ecologically sound and healthful environment, to meet equitably the needs of present and future generations. The right includes the processes and areas to maintain biological diversity and ecosystems. DHRE has provisions on environmental, resource and heritage rights of indigenous peoples. DHRE deals with housing and land tenure, including: a right not to be evicted arbitrarily from land or homes; an effective role for occupants in negotiations about eviction; and in the event of displacement, timely and adequate compensation, and/or substituted land or housing. DHRE also lists duties of individuals, governments, international organizations and transnational corporations.

Since 1995, the UN Commission on Human Rights has had a Special Rapporteur appointed to investigate transnational dumping of toxic and harmful material. Part of her task is to name perpetrators of illicit transboundary transfers of toxics, as well as to note the effects on victims of the resulting violations of human rights (e.g. life, health).

J.2 Environmental, Land and Resource Rights in the 1996 Constitution of South Africa

Under the Constitution, everyone has the right to an environment not harmful to health or well-being. The environment must be protected for the benefit of present and future generations, through measures that "secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development". Any person can launch litigation based on the Constitution, in the "public interest", defined to include the nation's commitment to land reform and "reforms to bring about equitable access" to natural resources. Other provisions say that the State must foster access to land "on an equitable basis", and that "A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices" is entitled to legally secure tenure or comparable redress. Since South Africa is a leader in the South, legal developments there will undoubtedly be influential elsewhere.

J.3 The New Commitment of the United Nations Development Programme to Integrate Human Rights and Sustainable Human Development

In January 1998, the United Nations Development Programme (UNDP), jointly with the UN High Commissioner for Human Rights, launched a human rights approach for UNDP. UNDP promises to mainstream human rights in its activities. The UNDP policy statement says that human rights and sustainable development are interdependent and mutually reinforcing. It adds that UNDP's sustainable development programming - eliminating poverty and sustaining livelihoods, promoting the advancement of women, protecting and regenerating the

environment, and developing capacity for good governance - "will benefit greatly from a more explicit human rights approach".

K: Proposals for Potential Follow-Up Research

One intention of the introductory study was to generate follow-up ideas for IDRC research. The report concludes by outlining project proposals under these headings:

- Looking at IDRC's Work from the Perspective of Particular International Human Rights Instruments
- Human Rights Principles Related to Land Tenure and Equity in Natural Resources Use
- Rights Principles and Projects Developed with and for Indigenous and Tribal Peoples
- Focusing on Countries Where IDRC Supports Project Work
- Environmental Treaties and Human Rights
- The 1998 Policy Accord Between the UN Development Programme (UNDP) and the UN High Commissioner for Human Rights
- Popular Education on Principles of Environmental Sustainability, Human Rights and Resource Equity
- Human Rights and Successful Human Development
- Improved Monitoring of the Realization of Economic, Social and Cultural Rights
- Internet and Other Information Technology Issues
- IDRC Projects and Human Rights
- Examining Links Among Human Rights Principles and IDRC Themes, Priorities and Initiatives

LINKING THE PRINCIPLES OF HUMAN RIGHTS, EQUITY IN NATURAL RESOURCES USE AND ENVIRONMENTAL SUSTAINABILITY

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1. THE PURPOSES AND APPROACH OF THE REPORT

Among IDRC's areas of expertise and focus are environmental sustainability and equity in natural resources use. Over the past decade, in a number of legal, political and theoretical developments internationally, these areas have been linked with concepts of and promotion of human rights. This report examines two assertions: that respect for human rights fosters realization of IDRC priorities and initiatives in the spheres of environmental sustainability and equity in natural resources use; and that the principles underlying IDRC programs for equity in the use of natural resources and on environmental sustainability support human rights aims. The paper surveys conceptual and legal foundations for the view that the relationship between human rights implementation and relevant IDRC work is reciprocally positive.

Although the language and perspectives of human rights have not played a large part in IDRC's programs, IDRC's historical, current and contemplated work can generally be characterized as human rights-positive. IDRC is a leader in the promotion of policies and practical initiatives that are in harmony with human rights: concerning environmental and human security, healthful and healthy ecosystems, resource management respecting the interests of current and future generations, biodiversity, and respect for indigenous and traditional knowledge. Links between IDRC work and human rights can be found in efforts to promote equity for indigenous peoples and equity for women, and in IDRC contributions to poverty alleviation, peacebuilding and participatory governance.

Although human rights concerns have broader implications for IDRC, this brief report does not attempt to canvass human rights connections that touch on the full range of IDRC's ambit. The paper concentrates on human rights issues pertinent to natural resources equity, the environment and related sustainability concerns. One section glances at the question of the universal applicability of human rights law. An introductory essay cannot cover international law extensively; as international relations specialists will observe, the report only skims the

¹ The author is a consultant and educator on human rights, environmental law, and the rule of law. His consultancy clients include governments, institutes and intergovernmental organizations in Canada and internationally. He has provided research and advice on environmental and resource equity issues to parliamentary committees in Canada and in Norway.

surface of United Nations and regional human rights regimes, sustainable development accords, and questions of enforcement. Since the principal legal focus is on human rights, rather than on environmental law, there is limited reference to international agreements in the environmental field.

The paper introduces two main categories of inquiry: 1. How realization of human rights supports sustainable, equitable development; and 2. How environmental and sustainable development principles encourage realization of human rights.

At least initially, this report will be a Food for Thought piece, for internal IDRC circulation and discussion. The report makes occasional reference to facets of IDRC projects that, in the writer's view, illustrate the themes of this paper in practical ways.² The essay concludes by speculating on potential follow-up research.

2. AN INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS

2.1 Equitable, Sustainable Development and the Exercise of Human Rights

Certain human rights, when exercised, are basic tools for advocating and achieving the goals of environmental protection, conservation, and equity in natural resources use. The free exercise of civil and political rights such as access to information, freedom of expression, and the right to participate in public life assist in environmental activism and in advocacy for sustainable development. On the other side, gross denial of human rights (e.g. suppression of public information and debate) can lead to escalated environmental damage and inequity. This has occurred in the tragedies associated with Bhopal and Chernobyl, and in the paths and wakes of massive river damming projects in many countries.

The fulfilment of economic, social and cultural rights, such as the rights to health, education and an adequate standard of living for all, also furthers environmental ends and promotes equitable use of natural resources.

² In preparing this essay, the author consulted IDRC staff whose expertise and professional responsibilities relate to the preoccupations of the report, and reviewed pertinent IDRC databases and publications. The writer interviewed personnel whose concentrations include: environmental integrity; biodiversity; access to land and resources for vulnerable or disadvantaged groups; land tenure rights; gender equity; equity in natural resources use; concerns of indigenous and tribal peoples; and participatory governance. Senior library staff cooperated in a quick survey of IDRC projects that, in the consultant's view, are human rights-supportive. (Of the large number of IDRC project descriptions that were scanned, only a small proportion used the language of human rights, or referred to specific human rights objectives.)

2.2 The *Universal Declaration of Human Rights* and the *International Covenants*³

The core source for human rights law in the latter half of the 20th century has been the *Universal Declaration of Human Rights*, adopted by the United Nations in 1948. As the *Universal Declaration* and later legal and political instruments recognize, human rights are rights that everyone possesses, simply because one is a human being. This idea is central to the two principal treaties derived from the *Universal Declaration*, namely the *International Covenant on Civil and Political Rights* (1966) and the *International Covenant on Economic, Social and Cultural Rights* (1966).⁴ Over the past two decades, a popular way to explain the supremacy of universal human rights over other laws and interests has been to cite Ronald Dworkin's assertion that in most circumstances rights "trump" other moral and political considerations.⁵

Based on the format of the *Universal Declaration* and the *International Covenants*, most human rights are usually clustered into two classes: civil and political rights; and economic, social, and cultural rights. Among the civil and political rights are these: the right to life; the freedoms of thought, conscience, religion, opinion, expression, movement, association and peaceful assembly; protection against torture or cruel, degrading, or inhuman treatment or punishment, including slavery or servitude; access to remedies for violations of rights; equality before the law; prohibition of arbitrary arrest, detention or exile; fair and impartial public trials in criminal cases; personal liberty and security; protections against arbitrary interference

³ The key UN human rights instruments can be found through the UN's website (<http://www.unhchr.ch/html/intlinst.htm>) and in *Human Rights: A Compilation of International Instruments - Volume 1, Universal Instruments* (New York/Geneva: UN, 1994).

⁴ A Declaration does not bind countries, in the legal sense, though it is morally and politically binding. The *Universal Declaration of Human Rights* is unique, however. Because of its special post-war origins, and its frequent unanimous affirmation in world fora, it can be argued that the *Universal Declaration* is legally binding on every State (country). Treaties (Conventions Covenants, and Optional Protocols) such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* do bind States. But they bind only "States Parties". States Parties are those countries who voluntarily go beyond signing a treaty; they take the next formal step and "ratify" or "accede to" the treaty. According to the UN's human rights website (<http://www.unhchr.ch>), as of mid-November 1998, each of the two International Covenants had approximately 140 States Parties.

⁵ Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), xi and 90.

with one's family, home, or reputation; cultural rights of minorities; and the right to take part in the conduct of public affairs and in genuine democratic elections.

Economic, social, and cultural rights recognized both in the *Universal Declaration* and in the *International Covenant on Economic, Social and Cultural Rights* include these: adequate food and shelter; a standard of living adequate for the health and well-being of oneself and of one's family; education; safe and healthful working conditions; social security in times of need; participation in the cultural life of the community; and the right to benefit from scientific progress and from one's own creativity. The right to join a trade union is covered by both Covenants; the social Covenant adds the right to strike, and rights for unions to function freely and to form federations.

The civil/political Covenant must be complied with immediately by countries who promise to comply with it (ratify it). In contrast, the approach adopted for supervision of compliance with the *International Covenant on Economic, Social and Cultural Rights* resembles the less stringent enforcement regimes of the majority of modern environmental agreements.⁶ Countries who are parties to the social Covenant are permitted to improve the realization of rights gradually, to the maximum of their available resources (Article 1(3)). Because of the leeway given to States, it is hard for UN supervisory bodies to judge when sufficient gradual progress is being made.⁷ An immediate violation of a right occurs, however, if rights are denied to a group because of discrimination or deliberate actions of a State, or because of failure by the State to take steps to protect existing rights.⁸

⁶ Boyle and Anderson, 47.

⁷ The key UN treaty monitoring body for this branch of rights operates on the assumption that in almost every case, a State with the correct political will can find resources to ensure at least minimum levels of rights. But "an international body cannot substitute its judgement for that of a state government where resource allocations are being made. It can only judge whether the process of decision-making demonstrates awareness and respect for ICESCR rights.": Robert E. Robertson, "Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social, and Cultural Rights" (1994) 16 *Human Rights Quarterly*, 692-714 at 702.

⁸ Maastricht Guidelines, January 1997, as elaborated in Allan McChesney, *A Resource Manual on Economic, Social and Cultural Human Rights* (forthcoming, 1999), (Washington, D.C.: Science and Human Rights Program, American Association for the Advancement of Science), Sections 5 to 9; Scott Leckie, "The Maastricht Guidelines on Violations of Economic, Social and Cultural Human Rights", *Human Rights Tribune*, Vol.4, No. 2-3, January 1997, 38.

The Preambles to both Covenants, as well as countless international agreements and statements, indicate that neither set of rights has primacy; all the rights are interdependent and must be enjoyed together.

For both Covenants, the primary monitoring mechanisms are: periodic performance reports by the Parties, submitted to UN expert bodies; alternative reports and complaints about perceived non-compliance, conveyed by non-governmental organizations (NGOs) to the same bodies; observations made by the expert bodies concerning a State's record; follow-up steps taken by political entities such as the UN Commission on Human Rights; and any publicity that arises to surround all of this activity.

In some countries, UN and regional human rights treaties automatically become part of national law, and can be relied on in the courts. In other countries, including Canada, legislation must be enacted to incorporate provisions of these international accords into national systems, before a court will feel bound by the accords. Often, international human rights law has an indirect but important effect in a country, because it is the foundation for constitutional or statutory human rights law. Some judges do turn to international human rights agreements and related case decisions for "persuasive" precedents, even if their country is not bound by the particular treaty.

2.3 Other UN Treaties

Other binding treaties formulated under UN auspices include those on torture, racial discrimination, the rights of women, and children's rights. All can be seen chiefly as elaborations of rights found in the *Universal Declaration* though the children's rights treaty, being the newest, branches out somewhat, and the women's rights convention is highly detailed. Both civil and political rights and economic and social rights are covered in the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and the *Convention on the Rights of the Child* (CRC), and to a lesser degree in the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD).

2.4 The Right to Development

A non-binding instrument that has become increasingly important in UN political contexts is the *Declaration on the Right to Development*.⁹ It is often cited with approval by delegates from the South and by staff of development NGOs. Significantly, it was one platform for recent reorganizations of personnel and priorities in the UN bureaucracy that administers

⁹ Adopted by General Assembly Resolution 41/128, 4 December 1986.

human rights programs.¹⁰ For the most part, this Declaration affirms and reiterates precepts from older human rights instruments, linking them to development themes. Article 1(1) typifies this approach:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

An element of the *Declaration on the Right to Development* that did add value to the international menu of human rights was the right to participate, mentioned in Article 1 and reinforced by Article 8 (2): "States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights."

IDRC Support for Participatory Development Practices - Project Examples

Many IDRC project descriptions note the necessity of involving intended beneficiaries in the planning, management and conduct of project activity. Projects in which such participation was said to be key included these goals: improving farm productivity and income while guaranteeing conservation of the natural resource base (Costa Rica); helping communities to develop, test and implement methods of community-based natural resource management, including protected areas management (Cambodia). Another planned to deal with (among other things): land use planning and forest rehabilitation; tropical soil analysis and preparation of related databases; analysis of water supply, storage, and management; and community level socioeconomic analysis (Mexico).

2.5 Regional Human Rights Treaties

International regional organizations of Africa, Europe and the Americas, respectively, have also adopted instruments that declare or guarantee a wide range of human rights. (See partial list in Attachment A of this report.) For reasons of economy, only a few of the specific provisions covered in regional instruments will be mentioned below. In most cases, regional instruments echo the rights found in the *Universal Declaration* and elaborated in the Covenants.¹¹ The Inter-American and European regional human rights treaties and procedures

¹⁰ Conversations with UN and NGO staff and diplomats in Geneva, and review of internal UN memos, December 1997 and February 1998.

¹¹ Similarly to the UN, the European and American regional human rights systems have supervisory panels of independent experts. Both systems have a human rights court to which states and individual complainants have access. Decisions on a case by these courts bind a State Party

are relatively robust regimes for individual human rights protection. The European regime is treated with utmost seriousness by States Parties. The African Charter contains some collective peoples' rights that are unusual; the enforcement regime is weak.

2.6 Equity and Non-Discrimination in the Realization of International Human Rights

2.6 (a) Non-Discrimination

Article 1 of the *Universal Declaration* recognizes that "All human beings are born free and equal in dignity and rights". The *Universal Declaration* and the two Covenants require that women and men share equally in the enjoyment of human rights, and that rights be ensured to everyone without discrimination, including on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The more recent *Convention on the Rights of the Child* (CRC) adds prohibition against discrimination on the basis of disability. Rights of the members of indigenous or tribal groups are protected under the principle of non-discrimination, and the civil/political Covenant has a specific separate guarantee of the rights of minorities (Article 27). Collective human rights are formulated in more recent instruments proclaiming protections for the interests and cultures of indigenous groups. (See below under Indigenous Rights and Self-Determination.)

Equity and non-discrimination ideals are at the heart of the Covenants and the *Universal Declaration*, and are a constant in international human rights instruments. With reference to the focus of the present essay, degradation of the environment and depletion of natural resources can have especially harsh impacts on women and on vulnerable groups such as indigenous and minority peoples who live in traditional ways, children, youth, disabled persons, and groups forced to flee environmental catastrophes.

2.6 (b) Gender Equity

Equal rights for women (and for girls) and active steps to achieve equality, are guaranteed by UN and regional human rights instruments mentioned above.¹² Gendered development has been in the mainstream of IDRC thinking and activity for some time. Based on advice received from IDRC personnel, the writer trusts that IDRC staff will accept that: 1. Women's empowerment and related development goals are aided by the fulfilment of women's human rights, including participatory and educational rights; and 2. In turn, full participation of

involved. See instruments in *Human Rights - A Compilation of International Instruments, Volume II, Regional Instruments* (Geneva: United Nations, 1997). The Organization of African Unity has approved plans for an African court to bolster the frail African monitoring system.

¹² CEDAW is the most detailed treaty elaborating ways to achieve women's human rights that are guaranteed by the *Universal Declaration*, by the two Covenants, and by other instruments.

women in planning, management and implementation of development will assist environmental and resource equity goals.

In addition to general sustainable development objectives, women have particular human rights concerns linked to environmental safety and equity in resource use, in both personal and occupational spheres. While women need to exercise civil and political rights in order to seek and protect equality, gender issues also arise regarding the more substantive economic, social and cultural rights. Among relevant areas are land use and ownership, agricultural and other modes of food harvesting and production, educational and occupational opportunities, particular problems faced by women and girls in working situations, and reproductive and preventive health care.

Equity for women in sustainable development requires attention to many rights issues at once, as is highlighted by this observation from the United Nations Development Programme:

[Promoting] women's rights means not only changing and enforcing legal codes on gender equality and property rights, but also increasing women's access to paralegal services and local land and property title registration services. Sustainable human development is consistent with such a comprehensive approach.¹³

IDRC Support for Gender Equity - Project Examples

IDRC project support involves a focus on women's rights and on central roles for women in the planning, management and conduct of development. As one example, gender issues featured in a project that included research on how rapid changes in biophysical and socio-economic environments affect women in fields such as these: indigenous knowledge of non-cultivated food sources; sustainable food production; coastal development and flood action planning; agroforestry; labour migration; and development of low cost pollution-control for small rural textile industries (Southeast and East Asia). Another project included research on sustainable management of natural resources and on conserving biodiversity through improved plant breeding, all with an emphasis on gender analysis and participation of women farmers (globally-focused project).

¹³ "Integrating human rights with sustainable human development" a policy document of the United Nations Development Programme, January 1998 (<http://www.unhchr.ch>), in the section headed "Human rights debates and approaches".

3. THE EXERCISE OF CIVIL AND POLITICAL RIGHTS AND EQUITABLE, SUSTAINABLE DEVELOPMENT

3.1 Civil and Political Rights in the *Universal Declaration* and the *International Covenant on Civil and Political Rights* (ICPR)

The key provisions referred to in this section are those in the *Universal Declaration* and in the ICPR. Almost without exception, each of the rights discussed is covered in similar language in the major regional human rights instruments of Africa, Europe and the Americas. For the most part, only unusual variations in the formulations of a particular right will be noted.

3.1 (a) Freedom of Expression and Access to Information

Activation of procedural rights can help people to operate as environmental watchdogs. Watchful individuals and organizations need access to information about environmental risks posed by activities of governments, development agencies, and corporations, and about related threats to vulnerable groups. The freedom to publicize opinions based on assessment of that information is also fundamental. Freedom of expression and access to information are part of the same human right, guaranteed by Article 19 of the *Universal Declaration*, and affirmed by the ICPR, also in its Article 19.

3.1 (b) Democratic and Public Participation Rights

Once aware of risks to their way of life, health or property, people in the path of supposed progress may clamour for the right to participate in the planning (or cancellation) of development schemes. Participatory rights are guaranteed by the *Universal Declaration* (Article 21) and in the ICPR (Article 25), with three components. These are: 1. democratic election rights; 2. the "right of equal access to public service"; and 3. the right to take part in "government" (*Universal Declaration*) or in "the conduct of public affairs" (ICPR).

As was noted in part 2.4 above, popular participation rights are also proclaimed in the UN *Declaration on the Right to Development*.

A participatory approach promises to assist environmental protection through informed debate. Marginalized groups likely to suffer the worst effects of environmental degradation or resource mismanagement - including women, those dispossessed of their lands or territories, and communities closely dependent upon natural resources for their livelihood - need to have a real voice in decision-making and in resource and environmental management. A human rights approach may stimulate political activism on environmental issues that in turn can help to achieve other human rights goals. Equitable participation has long been seen as a prerequisite for both universal human rights and sustainable development objectives:

Continuous involvement by those facing the problems of development encourages self-reliance by those best able to judge possible solutions ... some of the more expensive mistakes in development could have been avoided by more attention to popular opinion. Furthermore, the understanding and willing cooperation of those whom development projects are intended to benefit are essential for their success. Guarantees of participatory rights are essential to enhance the welfare of women, of religious, linguistic or ethnic minorities, and other socially disadvantaged groups. Cultural history or economic interests often act to restrict minorities. The application of either set of Covenant rights will better enable less favoured interests to fight vigorously for egalitarian implementation of the other set of rights, but full human development requires that they be enforced contemporaneously.¹⁴

3.1 (c) Legal Rights

States Parties to the civil/political Covenant guarantee the provision of effective remedies within the State for violations of civil and political rights (Article 2(3)). To the extent that environmental issues can be linked to violations of civil and political rights (e.g. denying information to environmental NGOs, or curtailing their freedoms of expression and assembly) litigation on human rights grounds can assist environmental or resource equity causes. The ability to resort to the courts on human rights grounds may be essential for obtaining a remedy for environmental damage, whether the redress is for oneself or for the community or society.

A campaign for sustainable or equitable development can be reinforced even by an unfavourable court decision. Litigation on such issues as suppression of information tends to capture the interest of the media and of politicians. Such attention is dangerous in some countries, but helpful in most. If the alleged violation of rights is also drawn to the attention of appropriate international bodies at the UN or in a regional organization, this can create further pressure to remedy not only the breach of civil and political rights, but also the underlying environmental or resource sharing problems.

One must remember that while exercise of civil and political rights opens opportunities to protect the environment and the quality of life, more powerful groups can usually make the best use of procedural human rights. Legislatures and courts often play a role in the imposition of burdens on dispossessed people or environmentally vulnerable communities. These groups may be denied full access to legislators or to the courts, because of poverty or a lack of institutional skills. Those who can afford to hire lobbyists or strong legal representation have strong advantages. In many jurisdictions, environmental protection laws and human rights laws are on the books, but are not widely known or implemented.

¹⁴ Allan McChesney, "The Promotion of Economic and Political Rights: Two African Approaches" [1980] 24 *Journal of African Law*, 163-205 at 184-185.

One conclusion from the foregoing is that legal recognition of environmental rights may not change things in a positive way for disadvantaged groups, unless they also have the stamina and the economic and educational capacity to generate preventive action or remedial measures. Implementation of the second main branch of human rights, economic, social and cultural rights (see Section 5 below), thus assists in the pursuit of sustainable, equitable development in a number of ways.

3.1 (d) Right to Life

In the hands of a dedicated intellectual or activist, the right to life (*Universal Declaration 3*, ICPR 6) can be elastic, taking into its purview State obligations with respect to health, food, housing, environmental safety, an adequate standard of living and so on.

Case Illustration #1 - Environment and the Right to Life

Although there are environmental rights in India's Constitution, these are not directly enforceable. The superior courts have developed enforceable environmental rights through creative interpretation of constitutional human rights provisions. Although they are derived from the right to life, they in turn add strength to that right, by giving it more substance. In a series of decisions during the 1980s and 1990s, the Supreme Court has ruled that the right to life includes the right to live in an environment that is healthful, one in which ecological balance is protected by the State.¹⁵

In the Ganga River pollution cases, M.C. Mehta, a social worker, petitioned India's courts to restrain tanneries from discharging untreated effluent into a river. The Supreme Court ordered the facilities to close until approved treatment processes could be set up. Aside from the court's linking of environmental and human rights, two other aspects are of current interest. Mr. Mehta was not directly affected by the pollution. The Court decided that where redress is sought for injury to disadvantaged persons, any member of the public, acting bona fide, can launch an action on their behalf.¹⁶ The Court conducted the kind of balancing of considerations often needed when there are mixed questions of human rights, environmental protection and equity in the use of resources. The judges acknowledged that "the closure of tanneries may bring unemployment and loss of revenue", but affirmed that "life, health and ecology have greater importance to the people".¹⁷

¹⁵ See: Soli Sorabjee, "Protection and promotion of fundamental rights by public interest litigation in India" (1993) 51 *International Commission of Jurists Review*, 31-37; Paul Hunt, "The Indian Experience", in *Reclaiming Social Rights*, 153-171.

¹⁶ *S.P. Gupta vs. Union of India* 1981 Supp. SCC 87 at 235.

¹⁷ *M.C. Mehta vs. Union of India* (1987) 4 SCC 463, 478.

3.2 Employing the Language of Civil and Political Rights

In the writer's opinion, much of what IDRC supports involves partners who exercise human rights in pursuit of environmental goals and equity in natural resources use. In most instances, however, neither these actors nor IDRC employ human rights terminology. Depending on the political atmosphere in a particular case, adding human rights arguments to the mix of tools used by IDRC and its partners could strengthen their hand. This is especially so if a State has ratified binding international treaties in the human rights domain and the government is trying to portray itself as a respecter of human rights. In situations where a repressive government reacts excessively to human rights talk and actions, perhaps labelling them as foreign and subversive, it may be prudent to stress safer arguments rooted in concepts of fairness and sustainable development.

The value of procedural rights with respect to environmental goals and resource equity can be demonstrated by using the language of civil and political rights. To illustrate, one could assert the following:

- The right to information includes the right to be informed in advance of environmental risks.
- The right to participate includes the right to be active in decision-making on environmental issues and on issues of resource use, at both the domestic and international levels.
- Fulfilment of the combined rights to expression, information, opinion and participation requires a right to environmental impact assessment for most kinds of planned development.
- The right to adequate legal redress for human rights violations calls for adequate rights of "standing" (entitlement to launch or to participate in court action). Easier rules of standing allow those who have no personal economic interest to start proceedings to protect the environment, i.e. "public interest litigation".

3.3 Denial of Human Rights Hinders Activism for Sustainable, Equitable Development

Human rights violations hamper the work of environmental activists and others who promote equitable development. Serious damage to the environment is frequently accompanied by denial of access to information and repression of activists.

Without protection for liberty and security of the person, environmental and resource rights activism can be self-endangering. Many people take great risks to challenge the plans of dominant elites: Chico Mendes was murdered for organizing rubber tappers and indigenous peoples of Brazil's Amazon rainforest; Wangari Maathai, leader of the Greenbelt Movement in Kenya was detained and harassed because she opposed ecologically unsound urban schemes;

Barbara D'Achille, an environmental journalist in Peru who wrote about harm to rainforests from coca cultivation, was killed by Shining Path guerillas; Fernando Pereira died when the Rainbow Warrior protest ship was bombed by French secret agents.¹⁸

Case Illustration #2 - Targeting of Environmental Activists

Perhaps the most infamous recent instance of a government targeting an environmental activist was the arrest and execution of Ken Saro-Wiwa by Nigerian authorities. Saro-Wiwa was leader of the movement for the survival of the Ogoni people. Ogoni land had suffered environmental devastation, and the Ogoni had received few benefits, from decades of oil production generated by firms such as Shell, Chevron and Mobil. The campaign led by Saro-Wiwa for indigenous peoples' rights, environmental cleanup and economic justice led to confrontation with Nigeria's military regime and with local authorities tied to the oil sector. Saro-Wiwa had called for an end to oil pollution in the Niger delta and for monetary compensation for the 500,000 Ogonis. After months of imprisonment, torture and denial of legal representation, Saro-Wiwa was summarily convicted on specious charges and executed in 1995, along with eight other Ogoni activists.¹⁹

4. PROPERTY RIGHTS, INDIGENOUS RIGHTS AND MINORITY RIGHTS

4.1 Property Rights and Self-Determination of Peoples

One facet of the *Universal Declaration* that was not later enshrined in either Covenant was a right "to own property, alone as well as in association with others" (Article 17). Also not incorporated in the Covenants was the companion right to protection against arbitrary deprivation of property.

In public-spirited hands, a right to private property could be used to bolster customary natural resources rights or to protect environmental quality. Equally, a strict right to own property can be used by private business concerns to overturn pollution controls, to inhibit the creation or preservation of parks and conservation areas, or to oppose other public works (e.g. schools) and programs (e.g. taxes). While a right to own, use, or enjoy property is found in regional human rights instruments of Africa, the Americas, and Europe, limitations are placed on the various expressions of the right, to ensure a balance with the competing public interests of society. A right to property was difficult to negotiate in the UN Covenants in the 1960s,

¹⁸ McChesney (1992), 14, researched from Urgent Action bulletins of Amnesty International and other non-governmental organizations.

¹⁹ Allan McChesney and Terry Mueller, "Promoting Human Rights and Environmental Protection", *Amnesty International Legal Network Newsletter*, Winter 1997, 1-3.

because their framers could not agree on the appropriate balance between private and public interests in property. The main reason for omission of property rights was thus "the inability of governments to agree on a formulation governing social takings and compensation therefor".²⁰

An important residue of property rights did emerge in the two UN Covenants, however. Worded identically in Article 1 of each Covenant is a collective right to self-determination. It includes the right of "all peoples" to pursue their own economic, social and cultural development, and "to dispose freely of their natural wealth and resources". The concept of self-determination was a focal point for those seeking liberation from political and economic colonialism, especially after World War II. The exercise of the right to self-determination enabled peoples (usually embodied in a colonized State) to gain or regain control over their own government, law, land and resources.

Nowadays, the dominant focus of discussion and action on self-determination is on issues of autonomy for ethnically-distinct groups within countries. Governments are not keen on the idea of minority peoples having an international political right to secede. (In the Québec separation debates of Canada, there is disagreement as to whether residents of Québec constitute a people.) Self-determination is increasingly viewed in terms of internal ethnocultural and economic rights, and to a lesser extent partial political autonomy. The right of self-determination for a people means a right of "non-interference" and also freedom to pursue "economic, social and cultural activities independent of government policies".²¹

From an IDRC perspective, the last sentence of Article 1(2) of each UN Covenant is of particular interest: "In no case may a people be deprived of its own means of subsistence." This provision builds a bridge between the group right of self-determination and such individual rights as the right to life, the right to an adequate standard of living and the property rights proclaimed in the *Universal Declaration*.²²

²⁰ Harry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics Morals* (Oxford: Clarendon Press, 1966) at 263.

²¹ Allan Rosas, "The Right to Self-Determination", in Asbjorn Eide, Catarina Krause and Allan Rosas, eds., *Economic, Social and Cultural Rights* (Dordrecht, Netherlands: Martinus Nijhoff, 1995) 79-86, at 83.

²² *ibid.*, at 85.

Intellectual Property Rights Supported by IDRC - Project Examples

IDRC projects support intellectual property rights (IPR) for less commercially powerful innovators, for example: 1. research on - IPR for indigenous contributions to plant innovations, governmental obligations re plant IPR in the World Trade Organization, regulation of foreign access to national biological diversity, and possible regional agreements regarding these issues (Zimbabwe); 2. linking formal and informal knowledge systems to ensure that gains from added value accrue to the innovators and originators of ideas, and ensuring respect for the IPR of local communities (India); 3. studies on - terms of access to genetic resources, sharing benefits resulting from use of genetic resources, protecting the rights, knowledge and practices of indigenous and local communities, identifying sustainable uses of resources, and IPR related to the foregoing issues, with the intention of tapping the research results for international IPR policy negotiations (Indonesia, India, Bangladesh and Ethiopia).

4.2 Indigenous Rights and Self-Determination

As was stated in 4.1 above, the current approach to self-determination concentrates on the need to accord a degree of political, social and economic autonomy to distinct ethnocultural groups within existing country boundaries and governing systems. Two UN instruments explicitly recognize the special environmental interests and natural resource rights of indigenous and tribal peoples. The *International Labour Organization Convention 169, Concerning Indigenous and Tribal Peoples in Independent Countries* (1989) has been in force since 1991 (ILO C169).²³ The *UN Draft Declaration on the Rights of Indigenous Peoples* (IPD) has been in negotiation for years within the UN Working Group on Indigenous Populations and other UN bodies.

Both ILO C169 and the IPD call for states to work with indigenous peoples to protect their territories, environments and traditional ways of life, and to safeguard their rights in connection with natural resources. A similar joining of issues is found in the *Proposed American Declaration on the Rights of Indigenous Peoples*.²⁴ In international instruments focused on the interests of indigenous peoples, one encounters close clustering of environmental, sustainable development and human rights principles.

²³ As of October 1998, it had been ratified by 13 States. A number of ILO comments on States' compliance reports (including those from Norway and from Latin American countries) have been published: Website of the International Labour Organization, <http://www.ilo.org>.

²⁴ Approved by the Inter-American Commission on Human rights on February 26, 1997. (unpublished copy obtained from the Department of Foreign Affairs and International Trade.)

Respect for the religious practices of aboriginal and tribal peoples is required by non-discrimination rights and by indigenous or minority rights and is of course linked to equity in the use of natural resources. The spiritual beliefs of traditional peoples are often tied to their interaction with nature and to places that have special connections to customs and/or livelihoods. Viewed from the other side of the picture, the right to participate in the cultural life of a community requires preservation of the physical environments upon which certain cultures depend.

Case Illustration #3 - Indigenous Peoples and Resources

In 1990, the UN Human Rights Committee, a group of experts who oversee implementation of the *International Covenant on Civil and Political Rights*, issued observations on a petition against Canada, centring on environmental and resource-use issues.²⁵ An individual representing the Lubicon Lake Indian Band, located in Alberta, alleged that development activity, including oil and gas exploration, deprived the group of its right to live a traditional way of life and to dispose freely of its natural wealth and resources. The petitioners specifically cited ICPR Article 1 on self-determination and control over natural resources. They also relied on Article 27, guaranteeing the rights of minorities to their own culture, religion and language.

After reviewing the matter, the Human Rights Committee commented on the inappropriateness of government and corporate actions with respect to the Band's rights as indigenous people. The Committee stated, however, that under the *Optional Protocol* (see preceding footnote) an *individual* could not claim to be the victim of a violation of the *collective* right of self-determination provided in ICPR Article 1. The Committee did find that historical inequities and recent development activities threatened the life and culture of the Band, in violation of Article 27.

4.3 Provisions of Indigenous Rights Instruments

4.3 (a) Comparing Three Important Indigenous Rights Instruments

The *ILO Convention on Indigenous and Tribal Peoples* (ILO C169) covers many environmental and resource equity concerns. There is a high correspondence between matters dealt with in ILO C169 and other documents that focus on indigenous peoples' interests. The segment below summarizes those provisions of ILO C169 that are of more relevance for the

²⁵ Primary supervision of Covenant implementation arises through the Human Rights Committee's review of compliance reports submitted by States and the alternative reports supplied by non-governmental organizations. A minority of States Parties have also ratified an *Optional Protocol* that permits individuals to submit a complaint or petition alleging violations by his or her State. *Lubicon Lake Band vs. Canada* was a petition filed by the Band's chief.

present study. Placed under the relevant summaries of ILO 169 provisions are cross-references [in square brackets] to Articles that cover similar subjects in two other documents: the UN's *Draft Declaration on the Rights of Indigenous Peoples* (IPD); and the *Proposed American Declaration on the Rights of Indigenous Peoples* (OAS/IP) of the Organization of American States (OAS).

One distinguishing feature of the ILO Convention is that, unlike the two draft instruments, it focuses on State duties, rather than on proclaimed rights of indigenous peoples. An important practical distinction among the three instruments is that only the ILO Convention has been voted into adoption by its governing organization. Having been ratified by enough States, it is in force, albeit for only a small number of States. Once either of the Declarations is adopted by its host organization, it will apply to all members of that organization, meaning the UN or OAS respectively.

C169 Article 2

Governments must develop, with the participation of the peoples concerned, actions to protect their rights and integrity, including measures for: (a) ensuring their equal rights and opportunities; (b) promoting full realisation of their social, economic and cultural rights, with respect for their social and cultural identity, customs, and institutions; (c) eliminating any socio-economic gaps faced by them, "in a manner compatible with their aspirations and ways of life".

C169 Article 4

States must take appropriate measures to safeguard the "persons, institutions, property, labour, cultures and environment" of indigenous and tribal peoples, so long as these measures are not "contrary to the freely-expressed wishes of the peoples".

[IPD 4, 7, 8] [OAS/IP - VII (1)]

C169 Article 17

Traditional procedures for the transmission of land rights among members of a people must be respected. "Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them."

[OAS/IP XVIII (2) and (3)]

C169 Article 7

"1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own

economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. States must take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit, including the conduct of environmental impact assessments before any planned development).

[IPD 19, 21, 23, 30] [OAS/IP - XIII, XXI]

C169 Article 7 (continued)

"3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities...".

"4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit."

C169 Article 20(3)(b)

States must ensure that indigenous and tribal peoples are not subject to working conditions hazardous to health, in particular through exposure to pesticides or other toxic substances.

[OAS/IP - XIX (2)(v)]

[IPD 28]

C169 Article 8

"2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established ... to resolve conflicts ... in the application of this principle."

[IPD 19, 20, 12, 13 and 14 as well as 4, 7, 8]

C169 Article 13

1. Governments shall respect the special importance of peoples' relationship with lands or territories which they occupy or use, in particular collective aspects of this relationship.

[OAS/IP - II (2)]

C169 Article 14

Rights of ownership and possession of peoples over lands they traditionally occupy shall be recognised. Measures shall be taken to safeguard rights to use lands not exclusively occupied, but to which they traditionally had access for subsistence and traditional activities. "Particular

attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect." Governments shall take steps to guarantee effective protection of rights of ownership and possession.

[IPD 26, 27] [OAS/IP XVIII (1) and (2)]

C169 Article 15

The rights of peoples to natural resources shall be safeguarded, including the right of peoples "to participate in the use, management and conservation of these resources". Where the State owns natural resources on indigenous peoples' lands, it must consult them as to whether and to what degree their interests would be prejudiced, before exploration or exploitation of such resources.

[IPD 30] [OAS/IP 15,]

C169 Article 16

Indigenous and tribal peoples shall not be forcibly removed from their lands.* No relocation shall occur without free and informed consent and after agreement on just compensation, and where possible, the option of return. *Article 13 defines "lands" here to include the concept of territories, covering "the total environment of the areas which the peoples concerned occupy or otherwise use".

[IPD 10] [OAS/IP - VII (2), XVIII (6)]

IDRC Support for Land Tenure Rights - Project Examples

Aspects of several IDRC projects look at questions of land tenure, for example: how to reconcile rural development (including ecotourism), land tenure reform and environmental conservation to foster sustainable development - while enhancing the tenure security of rural households that rely partly on natural resources for their livelihood (South Africa); searching for policies to underpin sustainable land use in a land reserve area faced with competing historical claims, economic encroachment and threats of increased landlessness (South Africa); assisting indigenous communities to establish legal and customary rights over the land within their commune boundaries (Cambodia).

4.3 (b) Additional Notes on Resource and Knowledge Rights

Article 26 of the Draft Declaration (IPD) elaborates more than any part of ILO C169 on the extent of resource rights and legal rights:

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources traditionally owned or otherwise occupied or

used. This includes full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the rights to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

OAS/IP frames similar principles regarding "subsistence" uses and other uses of "natural resources on their lands" in its Article XVIII, paragraph 4.

Both the UN Draft Declaration (IPD) and the draft OAS document (OAS/IP) cover more aspects of traditional medicine than ILO Convention 169 does. Article 24 of IPD states that indigenous peoples have "the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals". ILO C169, Article 25 (2) says that health services should take into account "traditional preventive care, healing practices and medicines" but does not mention ecological or biodiversity protection. Article XII of OAS/IP covers the wider range of issues contained in the IPD Article.

Significantly, the OAS/IP draft would also declare Intellectual Property Rights, including:

recognition and the full ownership, control and protection of their cultural, artistic, spiritual, technological and scientific heritage, and legal protection for their intellectual property ... [and] ... the right to control, develop and protect their sciences and technologies, including their human and genetic resources in general, seeds, medicine, knowledge of plant and animal life, original designs and procedure.

IDRC Support for Preservation of Traditional Knowledge - Project Examples

IDRC has devoted attention to this area, as is shown by two examples of project components: evaluating the sustainability and effectiveness of traditional knowledge and practices in the management of agricultural and forest production (Vietnam); rescuing traditional knowledge and appropriate technology and striving to transfer acquired knowledge - in an area of high ecosystemic and cultural diversity where deforestation and eco-cultural degradation are producing irreversible losses (Brazil).

4.3 (c) Indigenous and Minority Children

In the sense that the culture of an indigenous or minority people depends on traditional interaction with the environment, equity in resource use is guaranteed by the *Convention on the Rights of the Child*, ratified by virtually all countries on Earth.²⁶ Article 30 stipulates:

²⁶ <http://www.unhchr.ch>

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

5. THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND EQUITABLE, SUSTAINABLE DEVELOPMENT

5.1 The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Other Instruments

We have noted how promotion of civil and political rights contributes to equity and environmental protection through guarantees of due process and participation. Fulfilment of more substantive economic, social and cultural rights can also further environmental ends and equitable use of natural resources, through promotion of general human welfare.

In a few instances, economic and social rights formulated in international instruments directly spell out rights to environmental safety or to equity in resource distribution and utilization. In more cases, longstanding human rights provisions have been reinterpreted by scholars, activists, and UN expert bodies to include environmental and resource considerations. Rights have been construed innovatively to take into account equity and environmental concerns that were not prevalent at the time that particular human rights were formulated in 1948 or 1966.

5.1 (a) Health Rights Linked to General Environmental Issues

Two binding UN instruments link human rights explicitly to environmental issues. Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) calls on states to promote the right to health through improvement of environmental hygiene, and other means. The *Convention on the Rights of the Child* (CRC) recognizes the right of the child to the highest attainable standard of health (Article 24). To implement this right, among other things states must ensure "adequate nutritious foods and clean drinking-water", be vigilant about "the dangers and risks of environmental pollution" and promote widespread preventive education. They must also "ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health ... hygiene and environmental sanitation and the prevention of accidents".

The right to health is elaborated in Article 12 of ICESCR to include the following for everyone:

- the highest attainable standard of physical and mental health;

- provision for reduction of infant mortality "and for the healthy development of the child";
- improvement of environmental and industrial hygiene;
- prevention and control of "epidemic, endemic, occupational and other diseases";

It is our view that a State would need to demonstrate serious attention to environmental issues and questions of resource equity in order to fulfil the health rights obligations enumerated by Article 12. Through establishing links to human rights, national courts or other enforcement bodies can reinforce environmental regimes, as is demonstrated below in *Case Illustration #4*, under part 5.1 (d).

IDRC Support for Indigenous Health Science - Project Examples

IDRC is supporting research in Chile on indigenous perceptions of the concept of health.

Another (global) project assists an international institute to explore indigenous knowledge and gender differences in the management of medicinal plants.

5.1 (b) Health Rights and the Rights to Adequate Food, Water, Housing and Living Standards

We have noted that under Article 24 of the CRC, States must assure adequate nutritious foods and clean water for children. A general statement of everyone's health rights in the *Universal Declaration*, Article 25 (1), is part of a bundle of rights associated with personal welfare: "the right to a standard of living adequate for the health and well-being" of oneself and one's family, "including food, clothing, housing and medical care and the necessary social services.." ²⁷

In Europe, a Committee of Experts monitors compliance with the *European Social Charter* (ESC). The Committee has said that to adhere to the right to health in Part I of the ESC (as elaborated in Part II, Article 11) States in Europe must, *inter alia*, take measures to prevent air and water pollution, protect against radioactive substances and promote environmental hygiene. ²⁸

The right to food has implications not only as a personal and family right, but also for group rights and for equity in natural resources use:

ICESCR rights are held by the individual, but the natural resources needed to fulfil them can be both individually and collectively held. The resources needed to realize the

²⁷ For a primer on housing rights, see Miloon Kothari, "The global struggle for the right to a place to live", *Human Rights Tribune*, Vol.4, No. 2-3, January 1997, 40.

²⁸ Boyle and Anderson, 103.

right to food are an example of this. An individual may have the personal right to land as well as the collective right to harvest the oceans, draw water from rivers for irrigation, and hunt and trap in the bush. A state is obliged to ensure that the maximum available resources falling into both categories of "ownership" are provided ... Where people have inadequate food and lack the capacity to feed themselves, the state must intervene, either by directly providing the food or preferably by giving them the means to grow or otherwise obtain it themselves.²⁹

IDRC Support for Sustainable Food Supply - Project Examples

Many IDRC projects focus on preserving traditional agricultural and harvesting practices that are more sustainable than newer agriculture methods, while finding compatible ways to improve yields. A few examples were projects noted in Vietnam, Costa Rica, and regionally in Southeast and East Asia.

5.1 (c) Health and Employment

We noted above references in the ICESCR and in the CRC to industrial hygiene and occupational diseases. Article 23 of the *Universal Declaration* and Article 7 of ICESCR state the right to just and favourable conditions of work, which in the latter instrument include safe and healthful working conditions. Part I of the *European Social Charter* lists the latter as one of the prescribed policy aims of the Charter's States Parties.

5.1 (d) Protection of the Family and Home

There are linkages among several family-connected rights in *Universal Declaration* Article 16, ICESCR 10 and ICPR 17 and 23. These rights provisions involve marriage, protection of families by society and the State, and protection against arbitrary or unlawful interference with privacy, family and the home. Similar rights are contained in CRC Article 16. At first glance, these human rights provisions may not bring to mind inter-relations between environmental and human rights. International jurists have formed a conceptual bridge, however, in a leading European judgment encapsulated below.

Case Illustration #4 - Economics vs. Family and the Home

In the anti-pollution case of *Lopez-Ostra v. Spain*, the European Court of Human Rights ruled for the petitioner. They found an infringement of respect for the applicant's home and her private and family life, in breach of Article 8 of the *European Convention on Human Rights*.³⁰ As in the Ganga River pollution cases from India (see *Right to Life* at 3.1 (d) above) environmental harm was caused by tannery operations.

²⁹ Robertson, n.7, *supra*, 707-708.

³⁰ Case 41/1993, Judgment of 9 December 1994; Ser. A No.303C (1994).

A tannery waste treatment plant started operating just steps from the applicant's home. Fumes led to serious health problems for Ms. Lopez-Ostra; the company continued operating, and municipal and other authorities did not intervene to halt the offending practices. Spanish courts did not support efforts to obtain compensation for the complainant. The European Court of Human Rights then held that there was a breach of Article 8 rights to enjoyment of respect for the home and for private and family life. The Court awarded compensation of four million pesetas to the applicant.

As the Indian Court did in the Ganga River/Gupta decisions, the European panel of judges said that there must be a fair balancing of interests. In Ms. Lopez-Ostra's circumstances, the competing concerns were those of an individual and the community as a whole. In this instance, ruled the Court, Spanish authorities had not achieved a proper balance between the local municipality's economic well-being and the applicant's rights.

5.1 (e) Right to Education

As set out in Article 26 of the *Universal Declaration* and Articles 13 and 14 of the ICESCR, this right calls for compulsory primary education for all, and gradually increasing access to higher levels of education. Two of the purposes of education are proclaimed to be strengthening respect for human rights and enabling all persons to participate effectively in a free society. Satisfactory implementation of the right to education can help to raise environmental awareness and to equip disadvantaged groups with political skills to combat ecological damage and inequity. A lack of literacy or communication skills leaves marginalized groups less able to engage the levers of the political system.

Article 29 of the CRC, requires, *inter alia*, that education of the child shall be directed to: "development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations"; "preparation .. for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin"; and "development of respect for the natural environment".

5.1 (f) Right to Benefit from Scientific Progress

Article 27 of the *Universal Declaration*, affirmed by Article 15 of ICESCR, states:

- (1) Everyone has the right freely to participate in the cultural life of the community ...and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author.

This right has implications for intellectual property rights, recognition and preservation of traditional knowledge, and protection of minority and indigenous peoples' rights, all of which are discussed elsewhere in this paper.

IDRC Support for Scientific Progress and its Benefits

IDRC work in this area is demonstrated in these three examples of project components: validating and documenting local ecological and technological knowledge and generating products and services that provide incentives and income for grassroots innovators (India); enhancing the capacity of indigenous peoples to protect and develop traditional knowledge, especially pertaining to biological resources (jointly with UNDP); assisting indigenous communities to improve livelihoods through improvements in agriculture, forestry and the use of non-timber products - and monitoring and evaluating the processes of change so they can be successfully replicated elsewhere (Cambodia). (One of the projects noted under "Property Rights" above also had several elements designed to promote "rights, use and benefit sharing with respect to biological diversity".)

6. HOW SUSTAINABLE DEVELOPMENT PRINCIPLES ENCOURAGE REALIZATION OF HUMAN RIGHTS

6.1 Sustainable Development Declarations and Human Rights

A number of international accords in the sustainable development field incorporate human rights principles, explicitly or implicitly. Environmental protection efforts and advocacy for equity in resource sharing do help to fulfil human rights objectives. Failure to maintain environmental quality or to ensure fairness in the distribution of resource benefits can contribute to violations of the human rights to life, health, livelihood and so forth. Acts of public authorities that cause environmental degradation or that cut resource access for a vulnerable group may constitute an immediate infringement of internationally recognized human rights. Violations of social and economic rights also occur if the State fails to step in to prevent non-state actors (such as transnational corporations) from committing actions pertaining to natural resources that, if done by the State, would constitute human rights violations.

Looking beyond statements of law and principles, the creation of an effective system of environmental protection would help to ensure the well-being of future generations, and the survival of people who depend now on natural resources for their culture and livelihood. Often such individuals are part of economically marginalized populations, many of whom are indigenous or tribal peoples.

IDRC, Environmental Responsibility and Protection of Resources

IDRC supports a large number of projects involving indigenous peoples or other local communities in grassroots management of the environment and natural resources, biodiversity conservation, and resource rehabilitation. People are rarely able to manage their local ecology and resource base undisturbed, however. Outside economic forces are often their principal development problem (for example the impact of shrimp farming on mangrove coastal zones). An example of IDRC support for mitigating action was found in the description of a global project that was to focus on illegal logging and timber trade. The project plans called for study of illegal practices in Ghana, Cameroon, Paraguay and Brazil, including effects on protected species, forest resources, and the rights of forest dwellers. Research results were to be used for lobbying and for educational purposes.

6.2 The Stockholm Declaration on the Human Environment

The pioneering *Stockholm Declaration on the Human Environment* (1972) proclaimed "the fundamental right to freedom, equality, and adequate conditions of life in an environment that permits a life of dignity and well-being" and the "responsibility to protect and improve the environment for present and future generations".³¹ The Stockholm precepts carried forward in the 1987 Brundtland Report - *Our Common Future* - and in the 1992 *Rio Declaration*.³² Realization of the *Rio Declaration* would result in implementation of many human rights obligations; several Rio Principles have clear foundations in international human rights law, as is noted in part 6.3 below.

Accompanying the *Rio Declaration* was the more detailed *Agenda 21*,³³ which brought together many elements relevant to economic and social rights as well as to environmental and resource issues. Comparing a state's actions with the benchmarks of *Agenda 21* could be one device for assessing whether the state has complied with its human rights obligations, e.g.

³¹ Declaration on the Human Environment, Principle 1, *Report of the United Nations Conference on the Human Environment*, UN Doc. A/CONF.48/14/Rev.1., adopted in UNGA Res. 2997 (XXVII) of 1972.

³² The *Rio Declaration* was adopted in June 1992 by the Earth Summit: *Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development* (Rio de Janeiro, 3-14 June 1992) UN DOC. A/CONF.151/26/Rev.1, Annex I.

³³ *Agenda 21: Programme of Action for Sustainable Development, Report of the United Nations Conference on Environment and Development* (Rio de Janeiro, 3-14 June 1992) UN DOC. A/CONF.151/26/Rev.1, Annex II.

regarding the right to food.³⁴ Among other things, *Agenda 21* outlines recommended steps for conservation and reclamation of resources, in chapters on sustainable agriculture and rural development, oceans, and freshwater. "The chapter on sustainable agriculture and rural development prescribes in detail the measures needed to ensure appropriate natural resource usage: providing equitable access to natural resources; monitoring the use of the soil, ensuring the propagation of indigenous animals and vegetation; and protection of plant genetic resources."³⁵

6.3 *Rio Declaration on Environment and Development*

This segment looks at those parts of the Rio Declaration that have apparent connections among human rights and sustainable development principles.

6.3 (a) Right to Life and Right to Health

It seems axiomatic that the principle of inter-generational equity requires respect for the human rights to life and health of present and future generations. Principles 1 and 3 of the *Rio Declaration* tie together the rights to life and health, plus environmental and resource equity issues. Principle 1 proclaims that "Human beings are at the centre of concerns for sustainable development" and "are entitled to a healthy and productive life in harmony with nature". Principle 3 states: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." If a State fails to act to ensure that drinking water is free from dangerous toxins, for instance, a court or a monitoring body could rule that the right to life or health is thereby infringed.

Principle 14 exhorts States to cooperate effectively to discourage or prevent the relocation to other States of activities and substances "that cause severe environmental degradation or are found to be harmful to human health". Giving implicit heed to disasters such as Chernobyl, Principle 18 demands that States immediately notify other States of natural disasters or other emergencies likely to produce sudden harm to the environment of those States. Principle 19 requires States to consult in advance with other States about "activities that may have a significant adverse transboundary environmental effect".

6.3 (b) Right to Adequate Living Standards, Including Food and Housing

Rio Principle 5 calls on all States and all people to cooperate in eradicating poverty, in order to decrease disparities in standards of living and do a better job of meeting the needs of the world's majority.

³⁴ Robertson, n.7, *supra*, 709.

³⁵ *id.*

6.3 (c) Freedom of Expression and Access to Information / Democratic and Public Participation Rights / Legal Rights

Principle 10 says that each individual shall have the right to public participation in environmental decision-making, appropriate access to information held by public authorities concerning the environment, effective access to judicial and administrative proceedings, and adequate redress and remedies.

Rio Principle 17 dictates that environmental impact assessments be undertaken for proposed activities that are subject to a decision of a national authority and are likely to have a significant adverse impact on the environment.

6.3 (d) Gender Equity and Non-Discrimination

Principle 20 of the *Rio Declaration* affirms the vital role of women in environmental management and development, stressing that women's "full participation" is "essential to achieve sustainable development".

6.3 (e) Indigenous Rights and Minority Rights

Rio Principle 22 affirms the vital role of indigenous people, their communities and other local communities in environmental management and development, "because of their knowledge and traditional practices". "States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development."

Principle 23 proclaims: "The environment and natural resources of people under oppression, domination and occupation shall be protected".

6.3 (f) Other Human Rights Addressed in the Rio Declaration

Accepting that the law of armed conflict is part of human rights law, one notes Principle 24, insisting that States respect "international law providing protection for the environment in times of armed conflict".

6.4 **Other Links Between Environmental Responsibility and Human Rights**

The various Declarations that focus on sustainable development do not touch on all possible human rights implications. This section notes two additional areas of human rights concern that can be strongly affected by environmental problems but are not captured overtly in the sustainable development Declarations.

6.4 (a) Rights of Persons with a Disability

Reinforcement of environmental laws, and compliance with them, can bolster the human rights of people who have disabilities, particularly when disabilities arise from or are exacerbated by pollution. Enhancement of the physical environment, and remediation of damage, could

prevent many disabilities that arise from employment and from general ecological deterioration. Such improvements have implications for human rights related to work, health and mobility, as well as community and political participation rights.

6.4 (b) Refugees and Displaced Persons

Millions of people have been uprooted because of failure to prevent or mitigate foreseeable environmental calamities and failure to take into account the knowledge and desires of vulnerable groups in development initiatives. Such displaced people are sometimes referred to as "environmental refugees". Many traditional people are dispossessed of customarily enjoyed land or resources because the State fails to assure land tenure or to address pressures from economic competitors (e.g. mining firms, foresters, ranchers, aquaculture interests, tourism developers). Uprooted groups add to the burdens of neighbouring territories into which they migrate. Like other minorities, they face special problems in trying to enjoy the human rights that are supposed to be equally theirs.

A number of IDRC project profiles observe interconnections between environmental damage, poverty and migration problems. One project outline notes the following: "In the case of Bangladesh, the problems of landlessness, impoverishment and rural out-migration are compounded by environmental hazards and environmental degradation caused by economic development activities."

7. A UNIVERSAL HUMAN RIGHT TO A SAFE AND SOUND ENVIRONMENT?

There is no universal human right to environmental integrity, per se. The *Stockholm Declaration* pioneered a right joining (i) "freedom, equality, and adequate conditions of life", (ii) "an environment that permits a life of dignity and well-being" and (iii) "responsibility to protect and improve the environment for present and future generations". Twenty years later, the *Rio Declaration* proclaimed many Principles akin to human rights, along with consequent responsibilities, but did not declare a human right to a defined type or quality of environment.

There are regional international instruments that proclaim a specific environmental human right. The 1981 *African Charter on Human and Peoples' Rights* states in Article 24 that "All peoples shall have the right to a generally satisfactory environment favourable to their development." The African Commission on Human and Peoples' Rights has not used Article 24 to expand human rights enforcement, however, but to support pollution controls. A right to gradual implementation of a healthful environment is expressed in the *Second Protocol to the American Convention on Human Rights*.³⁶ Article 11 says that "everyone shall have the

³⁶ *Protocol of San Salvador - Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights*, (1989) 28 ILM 156.

right to live in a healthy environment and to have access to basic public services" and that "States Parties shall promote the protection, preservation and improvement of the environment".

Imagining a universal human right to a certain degree of environmental quality, such as "safe", "clean", "healthful", "balanced", "secure", "viable" or "ecologically sound" may be like dreaming of green pie in the sky. A right of everyone to benefit from a safe, sound, sustainable environment, or some analogous formulation, could act as a focus for mobilizing support on environmental and resource issues. Yet such a general right would face enormous monitoring and enforceability problems. Perceptions of desirable qualities of the environment vary across cultures, communities and time. If a global right to a safe or healthful environment were agreed upon, it would no doubt suffer the same sorts of problems of definition, subjectivity and regional relativism faced by the notions of sustainable development and inter-generational equity. Except where enforced through strong national legislation, even more precise international and constitutional environmental rights tend not to be readily enforced or enforceable.

Two of the indigenous rights instruments reviewed earlier contain versions of a right to a healthful and healthy environment, one of which focuses directly on resource equity:

Proposed American Declaration on the Rights of Indigenous Peoples, Article XIII (1): "Indigenous peoples have the right to a safe and healthy environment, which is an essential condition for the enjoyment of the right to life and collective well-being."

Draft Declaration on the Rights of Indigenous Peoples, Article 28: "Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources..."

According to UN reports on environment and human rights, environmental tenets are linked to human rights in more than 60 Constitutions worldwide. Among constitutional statements of environmental rights found in the Constitution of Portugal - "suitable for the development of the person"; and in the Constitution of Ecuador - "free from contamination".³⁷ A failing shared by most environmental human rights in constitutions is a lack of strong enforcement

³⁷ Allan McChesney, *Public Participation for Environmental Protection* (Ottawa-Hull: Environment Canada, 1994), Annex 4, 161-165.

mechanisms. One substantive right that conceivably could be understood and enforced is the right to a "safe" environment.³⁸

Case Illustration #5 - Right to an Intact Environment

In 1997, Turkey's top administrative law court caused a gold mining project to halt, declaring it unconstitutional. The judges ruled that the operation violated a provision of Turkey's recently amended constitution that protects everyone's right to a healthful, intact environment. Opposition to the mine was led by local olive growers, because: clearing land for the mine required felling of thousands of trees; preliminary drilling rendered the farmers' water undrinkable for four months; the mining technique planned by the French mining interest, Eurogold, relied on cyanide leaching; and Eurogold's tailings pond would be situated on an active fault line.

When the olive farmers organized a referendum on the mine, 90% of eligible voters in the immediate vicinity turned out; none voted in favour of the project. When army tanks were sent into the area just before the court decision, the growers responded with a peaceful demonstration of 10,000 people and 1,000 tractors.

The olive growers used civil and political rights to protect economic and social rights and environmental rights. One observer says this about the court's judgment: "They set a precedent ... for regarding pollution not as a matter to be debated among technicians but as an issue of basic human rights".³⁹

8. DIFFERING VIEWS ON INTERNATIONAL HUMAN RIGHTS

The preceding sections examined ways that human rights and other principles are mutually supportive, potentially interacting to assist marginalized groups. The writer sees environmental and human rights principles as bases for restraining harmful activity by governments, corporations and others, within nations and on the international stage. In politics, culture and law, however, ideas compete; "global" human rights and sustainable development principles are not uniformly extolled. This section glances at a few of the tensions that strain at the universality of human rights.

³⁸ This option was at one time recommended by the Law Reform Commission of Canada: McChesney (1992), 14.

³⁹ Website of the Sierra Club, <http://www.sierraclub.org>, October 1997.

8.1 Are Universal Human Rights "Western" and Thus Inappropriate for the Southern World? (Corollary: Is This An Old Issue That No Longer Needs to Be Addressed?)

In the 1990s, Asian, Islamic, African and communal "values" are still proffered by governments of the South as reasons to ignore or dismiss international human rights standards and scrutiny. States from other regions and political systems can also find arguments to shield themselves from criticism on human rights grounds, but not usually on the basis that the notion of universal human rights is itself flawed.

China and Southeast Asian countries cite cultural traditions, national sovereignty, and their levels of economic development to deny the legitimacy of outside commentary on repressive measures against Tibetans (China), East Timorese (Indonesia) or democracy movements (Burma/Myanmar and many other States). At the Asian Preparatory Meeting for the 1993 World Conference on Human Rights, these countries emphasized Asia's communal social and cultural traits and the individual's duties to society.⁴⁰

Well known critiques of Asian Values have been put forward by former Hong Kong Governor Chris Patten:

Patten demolishes Asian Values ... First he dismisses the notion of a monolith called "Asia". This part of the world may have produced Lee Kuan Yew, but it is also where the Burmese dissident Aung San Suu Kyi lives ... Second, he reasserts the universality of values such as individual liberty: "It feels much the same to be beaten up by a policeman in Britain or Indonesia," he correctly notes. More precisely: "No alleged national tradition can make right in one place what is wrong in every place."⁴¹

Restriction of the scope of internationally recognized human rights is a common feature of Islamic instruments listing human rights.⁴² Limitation clauses purport to make internationally

⁴⁰ Chen Jie, "Tactical Alliance: Southeast Asia and China's post-1989 human rights diplomacy", *China Human Rights Forum*, Fall 1998, 8-11 and 46. But as old guards of Southeast Asia's authoritarian regimes start to leave the scene, "Issues like human rights and democracy have now become increasingly divisive within ASEAN - not because of Western pressure, but because of what has happened in the region itself." (page 11)

⁴¹ Charles Foran, reviewing Chris Patten, *East and West - The Last Governor of Hong Kong on Power, Freedom and the Future*, in the *Globe and Mail*, October 10, 1998, D12.

⁴² Martin Lau, "Islam and Judicial Activism: Public Interest Litigation and Environmental Protection in the Islamic Republic of Pakistan" in Boyle and Anderson, 285-302, at 287.

recognized human rights subject to Islamic law. This is the approach taken by the 1990 *Cairo Declaration on Human Rights in Islam*, passed by the Organisation of the Islamic Conference.⁴³

Authoritarian Third World governments from all regions, not just Asia, strove to magnify the significance of cultural divergence at the 1993 World Conference on Human Rights and its preparatory meetings.⁴⁴ This trend spilled over into UN fora, such as the UN Working Group crafting a *Declaration on the Rights of Human Rights Defenders* (the usual but unofficial title). From 1993 to 1998, a high ratio of negotiation time involved proposals from a few delegations that sought to subject global human rights to national law and "culture", and to invent new duties to the State for human rights advocates.⁴⁵ Those seeking limitations were chiefly Cuba, China, Mexico, Syria and Nigeria. Those supporting stronger rights and protections for NGOs and individual human rights activists included Chile, South Africa, Argentina and sometimes Turkey. India played an important middle ground role.

The preponderance of nations of all regions have ratified the major international human rights treaties, and countries almost never claim that they deny or oppose human rights. When it suits their purposes, States with horrendous human rights records rely on international human rights law to criticize rival States. Despite such evidence of worldwide support for universal norms, we know that many actions of States go against the grain. In UN assemblies and corridors, delegates of hardline regimes work to reduce the reach and strength of human rights offices and expert bodies, by taking away investigative and reporting powers, influencing staffing and budget decisions, changing rules and voting procedures, abusing consensus

⁴³ If implemented, the effect of the Cairo document would be to curtail existing international rights. Individual UN human rights staff thus expressed surprise that it was included in *Human Rights - A Compilation of International Instruments, Volume II, Regional Instruments* (Geneva: United Nations, 1997) at 487-484. From the vantage of the current report, Article 17 (a) of the *Cairo Declaration* is of interest: "Everyone shall have that the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his [or her] self-development and it is incumbent upon the State and society in general to afford that right."

⁴⁴ *ibid.*, 741-745.

⁴⁵ The writer was at the 1993 Conference as a Conference staff person and NGO representative, and participated in follow-up meetings in 1998, including the global Vienna+5 Forum in Ottawa. In the UN Working Group on Human Rights Defenders, he represented the International Commission of Jurists from 1991 until March 1998, when the Group completed its negotiations. The resulting draft Declaration will likely be adopted by the General Assembly in December 1998 to help mark the 50th Anniversary of the Universal Declaration..

decision-making to gain virtual veto power in negotiations, and curtailing the independence of appointed experts.

As IDRC personnel are aware, respect for cultural differences is important in development and human rights work. It is not only State representatives who debate the cross-cultural relevance of human rights. Academic proponents of the "cultural relativist" school have argued that human rights are an individualistic Western construct with limited universal relevance, and that there is no universal conception of human rights. They observe that most States violate their own human rights principles. Conflict within societies among traditional, transitional, and modern norms prevents standard interpretation or application of principles.⁴⁶ The concept of an autonomous individual possessed of inherent, inalienable rights is meaningless in many societies of Africa and other continents, as it once was in the West. There is diversity among Third World belief systems, but the individual in these regions "has been perceived as an integral part of a group within which he or she has a defined role or status".⁴⁷

⁴⁶ Adamantia Pollis and Peter Schwab, "Human Rights: A Western Concept with Limited Applicability" in Pollis and Schwab, eds., *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger, 1979) 1-18; and P. Schwab and A. Pollis, *Towards a Human Rights Framework*, (New York: Praeger, 1982) 239-241. A more recent critique of universality is Winin Pereira, *Inhuman Rights - The Western System and Global Human Rights Abuse* (Mapusa, Goa: The Other India Press and Third World Network, 1997). Pereira lists rights abuses by westerners, suggesting these occur partly because of a faulty *Universal Declaration* (UDHR) and misuse of it by the West. One antidote, says Pereira, would be a new all-inclusive right to life, incorporating rights such as health and food. [Note that India's high courts have interpreted the constitutional right to life to include other rights - *Case Illustration #1* above.] The present writer sees major drawbacks to Pereira's analysis. NGO and academic experts have already reinterpreted most UDHR rights (food, health, housing, etc.) to add content and strength, and this approach has been adopted by intergovernmental bodies. Expansion of rights occurs constantly through elaboration of UDHR rights in treaties derived from it, and interpretations by monitoring bodies. There are good grounds for asserting that economic, social and other abuses committed by the West are not manifestations of how western elites define and manipulate human rights, as Pereira seems to hold. Rather, they are simply violations of universally recognized human rights, as these are currently and widely understood.

⁴⁷ Schwab and Pollis (1982), *ibid.*, 16.

Leading authorities counter that cultural relativism, as applied to human rights, fails to take account of the evolving non-static nature of culture, and is often not based on significant differences in cultural values:⁴⁸

Cultures can and do change. People are quite adept cultural accommodationists; they are able to choose which aspects of a "new" culture they wish to adopt and which aspects of the "old" they wish to retain.

...

In considering any cultural practice it is useful to ask, who benefits from its retention? Spokesmen are likely to stress, in their articulation of "group" values, those particular values that are most to their own advantage Quite often, relativist arguments are adopted principally to protect the interests of those in power.

...

The fact that human rights is originally a liberal notion, rooted in the rise of a class of bourgeois citizens in Europe who demanded individual rights against the power of kings and nobility, does not make human rights inapplicable to the rest of the world. ... [All] over the world there are now formal states, whose citizens are increasingly individualized ... [and]... need protections against the depredations of class-ruled governments.

...

We are skeptical ... of the radical Third Worldist assertion that "group" rights ought to be more important than individual rights. Too often, the "group" in question proves to be the state. Why allocate rights to a social institution that is already the chief violator of individuals' rights? Similarly, we fear the expression "peoples' rights". Often a "group" right can simply mean that the individual is subordinate to the group.

...

The one compelling use that we can envisage for the term "group rights" is in protection of native peoples, usually hunter-gatherers, pastoralists, or subsistence agriculturalists, whose property rights as collectivities are being violated by the larger state societies that encroach upon them. Such groups are fighting a battle against the forces of modernization and the state's accumulative tendencies.

In contrast to the ruling regimes and elites of their countries, many prominent human rights scholars and NGO activists from Southern regions have embraced universal human rights standards, finding few incompatibilities between them and regional or national cultures, values and practices. A high degree of consensus in favour of universality was expressed by more than 150 NGO representatives from around the world who assembled in June 1998 for the

⁴⁸ Rhoda Howard and Jack Donnelly, "Introduction", in Donnelly and Howard, eds., *International Handbook of Human Rights* (Greenwood: New York, 1987), 18-20 and 23-24.

Vienna+5 NGO Forum at Ottawa. In 1993, before and at the Vienna World Conference on Human Rights, Asian NGOs took positions that contrasted significantly with the regional Declaration put forward by their governments. Asian NGOs were supportive of the perspective that human rights are universally relevant and applicable. The large delegation of Asian NGO representatives at the 1998 Vienna+5 Forum continued to express this view, as did delegates from all regions.

A surprisingly large number of Asian and African countries registered reservations to restrict their obligations when they ratified the UN *Convention on the Rights of the Child*.⁴⁹ In clear contrast, Asian NGO experts say this:

All countries should enact appropriate legislation, incorporating the rights set out in the *Convention on the Rights of the Child* into national law.⁵⁰

Human rights champions from the Third World try to build bridges between what they regard as core facets of their religions or cultures and international human rights. A cross-cultural approach is advocated by the distinguished Sudanese human rights scholar, Abdul An-Na'im:

Some scholars and political leaders have argued that the current international standards of human rights, together with the machinery of implementing them, may not be sufficiently universal because they lack legitimacy in major cultural traditions. Others argue that these standards and machinery are universal because the vast majority of governments have either participated in the formulation process or subsequently ratified the relevant international instruments. They also warn against the dangers of claiming cultural relativity as a pretext for justifying human rights violations...

...

My view ... is that scholars and activists should neither underestimate the challenge of cultural relativism nor concede too much to its claims...

...

For example ... adherents of the Western liberal tradition may find it difficult to accept certain collective or communal rights, such as the right to development, as human rights ... Moreover, one would expect most "traditional" cultural perspectives to disagree with the status and rights of women as formulated in international instruments.

⁴⁹ Christina M. Cerna, "Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts", in (1994) 16 *Human Rights Quarterly*, 740-753 at 748.

⁵⁰ Madhavi Basnet Karki and Gopal Krishna Siwakoti, "Child Labour and Free Trading", *Human Rights Tribune*, Vol.4, No. 2-3, January 1997, 36.

...

[One] may reasonably expect cultural antagonism toward some human rights to diminish the efficacy of those standards in a particular society... There may be room for changing a cultural position from within, through *internal discourse* about the fundamental values of the culture and the rationale for these values.

...

Furthermore, since cultures are constantly changing and evolving internally, as well as through interaction with other cultures, it may be possible to influence the direction of that change and evolution from outside through *cross-cultural dialogue*.

...

This approach, however, does not seek to repudiate the existing international standards of human rights.. [There] are compelling reasons for accepting and working with these standards... It is useful to have the framework and the specific provisions ... as a point of reference .. in order to perfect the concept and better to articulate standards of *genuinely universal* human rights. Second... scholars and activists can derive some protection from the existing standards and machinery in their efforts to develop and implement more culturally legitimate standards within their respective societies ... Thus, for example, I need the framework ... in working for the cultural legitimacy of universal human rights within my own Islamic tradition... I need the protection of these standards because my efforts challenge powerful interest groups that might wish to prevent me from expressing my views.⁵¹

A public education handbook distributed widely by UNESCO over the past two decades states that the dignity and equality of all people, and other values that underlie what we today call human rights, "can be found in virtually every culture and civilization, religion and philosophical tradition".⁵² A complementary perspective is offered by a philosopher with East Asian roots:

[The] core values underlying human rights can be supported by non-Western cultures. These core values are specified in the Preamble to the Universal Declaration, including the "inherent dignity" and "worth" of all human beings ... It is for the advancement of

⁵¹ Abdullahi Ahmed An-Na`im, editor, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992), 2-5.

⁵² Leah Levin, *Human Rights - Questions and Answers*, 3d edition, (Paris: UNESCO, 1996) 15.

these core values affirmed in various non-Western cultures that protection of human rights can be seen as necessary and desirable.⁵³

During the 1990s, there have been UN-sponsored world conferences on themes of human rights, population, environment and development, social development, and gender equity. In relevant official pronouncements from these conferences, participating governments have consistently endorsed by consensus the notion that human rights belong universally to all humans, everywhere. The majority of governments from every region and from the broad political spectrum participated vigorously in the conference negotiations, including States who in other fora have suggested that certain human rights ideas are not appropriate for their citizens. The process and outcomes of the world conferences added weight to the contention that human rights are indeed universal, but as the contrasting views gathered here have shown, international human rights law is a fluid discipline.

8.2 Views on the Priority of Civil Rights

Some Western thinkers do not admit that economic and social rights are actually human rights, holding that economic, social and cultural rights fall into the realm of needs, preferences or desires. One view is that extending human rights to economic and social rights dilutes core fundamental liberties. Conservative critics have opposed the notion that peoples can have overriding sovereignty over their resources, just as some dismiss social and economic human rights for the individual.⁵⁴

Critics can say that precepts of social rights are vaguer than those of civil, political and legal rights, but even the latter branch of rights was not always well comprehended. To use one example, when the *Universal Declaration* was adopted in 1948, the international community was not clear about what constituted torture. There had been little examination of what differentiated torture from "cruel, inhumane and degrading treatment or punishment". However, because of the attention afforded to political and civil rights over the years, the content and meaning of the right to be free from torture (as well as of other civil and political rights) has been clarified - through extensive case studies, debates, research and analyses. Enhancement of the understanding of economic and social rights will also rise if human rights advocates and international bodies give more attention to them over time.

⁵³ Xiaorong Li, "Can a Confucian Person Have Rights?" *China Human Rights Forum*, Fall 1998, 16.

⁵⁴ See, e.g., Maurice Cranston, "Are There Any Human Rights?", in (1983) 112 *Daedalus*, 1-17; Jeane Kirkpatrick, "Establishing a Viable Human Rights Policy" in Howard Wiarda, ed., *Human Rights and U.S. Human Rights Policy* (Washington: American Enterprise Institute, 1982).

There is evidence that in the Western world⁵⁵ and in the Third World⁵⁶ certain civil and political rights are essential to obtaining economic and social rights, and that provision of social/cultural rights (such as education) fosters attainment of other human rights. Economic development or "growth" will not guarantee human rights, whether of an economic or any other kind, without equitable distributive measures. Development planning has often been a cover for the continued violations of citizens' rights by the ruling class.⁵⁷ As was noted above in the discussion of Democratic and Public Participation Rights (Section 3.1 (b)) development strategies frequently fail because those with power pay scant heed to citizens' needs and views, including those pertinent to achievement of economic and social rights.

Whatever the origins of human rights, the list now generally accepted as universal includes a wide range of economic and social rights. In unanimous statements from the world conferences of the 1990s, democracies with free markets, as well as authoritarian capitalist, communist and religious regimes, all expressed agreement on the equality and interdependence of economic, social, civil, political and cultural rights. It is notable that as of 1998, the UN Centre for Human Rights, (now the Office of the High Commissioner for Human Rights) has been reorganized with a central emphasis on the "right to development", a concept that depends on the interdependence of all human rights.

9. TENSIONS AMONG ENVIRONMENTAL, SUSTAINABLE DEVELOPMENT AND HUMAN RIGHTS OBJECTIVES

There is often competition between human rights aspirations, e.g. the right of free speech versus the desire to combat discriminatory or hate messages. Many customary practices are significantly harmful for women, children or minorities, e.g. female genital mutilation and exploitive or exclusionary labour practices. In the latter examples given, incompatibility of rights involves competition between culture and human rights and also highlights tensions between group rights and individuals' human rights. We would argue that when women, children or minorities who are harmed by such practices seek to assert their human rights, tradition must give way to those rights.

⁵⁵ Robert Goldstein, *Political Repression in Nineteenth Century Europe* (Totowa, N.J.: Barnes and Noble, 1983).

⁵⁶ Jack Donnelly, "Human Rights and Development: Complementary or Competing Concerns?" in (1984) *World Politics* 36, 255-83; Sylvia Ann Hewlett, "Human Rights and Economic Realities: Tradeoffs in Historical Perspective" (1979) 94 *Political Science Quarterly*.

⁵⁷ Howard and Donnelly, n.43 *supra*, at 25-26.

Compatibility is also not guaranteed between human rights and sustainable development ends. Hunger for human rights does not automatically involve a thirst for environmental sustainability and equity in natural resources use. Where people are vulnerable to violent political and military repression or face chronic hunger and poverty, urgent problems of immediate survival are likely to displace concern for long-term ecological integrity. This common sense cannot be set aside by the tidy concept that human rights, resource equity and environmental protection are complementary or interdependent.

Even for activists and well-fed intellectuals, strains arise between environmental and human rights objectives. Environmentalists may distrust the priority that human rights activists accord to human desires that compete with ecological responsibility. For if the human rights to life, health, food, property, culture and adequate living standards are fulfilled for the majority of humanity, swifter depredation of natural resources could be a consequence. On the other side, human rights activists can criticize some in the environmental movement for disregarding immediate human needs in the quest for protection of nature and the unforeseeable needs of future generations. Many environmental thinkers say that non-human elements of the environment have intrinsic value and that humans have duties to protect them (more so for highly sentient animals).⁵⁸ Many indigenous cultures and a few non-aboriginal philosophers believe that flora and fauna have rights in the same way that humanity does.⁵⁹

Competition occurs between groups with divergent environmental and resource use goals, in which neither side has objectives that are intrinsically "bad" or anti-ecology. (IDRC has experience in supporting amelioration of such problems.) Rivalry may surface, for example, when supporters of ecotourism businesses or parks conflict with local groups, for whom interaction with nature is essential to the practice of traditional livelihoods and culture. Both sides want access to the same forest, plants, animals or coastal resources, but for unharmonious purposes. In these instances, one hopes that a balance can be struck through rights-respecting participatory processes. In the event of an unresolvable dispute, however, international legal principles may require that the human rights of one side trump the economic or environmental interests of the other. (In the writer's view, the provisions of some trade and (draft) investment treaties would shift the weight to the other side, but that concern is not within the bailiwick of this essay.)

⁵⁸ J.G. Merrills, "Environmental Protection and Human Rights: Conceptual Aspects" in Boyle and Anderson, 25-41; Holmes Rolston III, "Rights and Responsibilities on the Home Planet", (1993) 18 *Yale Journal of International Law* 251-279.

⁵⁹ James Nash, "The Case for Biotic Rights", in (1993) 18 *Yale Journal of International Law* 235-249; and some of the sources compiled in Chapter 1 of A. McChesney, *International Environmental Law - Materials* (Ottawa: Carleton University, 1991).

Human rights law and principles of resource equity would usually call for respecting the customary practices of minority or indigenous peoples, as against economic interests that do not have a good foundation in human rights. At first glance, a solution that favours traditional peoples would sound consistent with the goals of preserving biodiversity and equitable access to natural resources. Preservation of the ecology for future generations would seem to be in the long term interest of groups whose culture and livelihoods depend on keeping nature in balance. But human beings do not always heed long range forecasts. No doubt some customary agricultural practices contribute to forest destruction, coastal erosion, soil erosion and even desertification. Such outcomes are more likely where a "traditional" people adopts new technology or new consumer wants, where its resources are depleted by economic competition or increased trade, or when it must deal with population increases that its territory can no longer sustain.

10. RECENT INITIATIVES LINKING SUSTAINABLE DEVELOPMENT, EQUITY IN NATURAL RESOURCES USE AND HUMAN RIGHTS

10.1 *Draft Declaration of Principles on Human Rights and the Environment (DHRE)*

9.1 (a) Background

In May 1994, an international gathering of experts on human rights, environmental protection, and equity pertaining to natural resource use constructed a *Draft Declaration of Principles on Human Rights and the Environment (DHRE)*.⁶⁰ The DHRE was guided by the concern that "human rights violations lead to environmental degradation and environmental degradation leads to human rights violations". The DHRE looks at ways that human rights law and sustainable development principles apply to environmental and resource equity issues. This packaging of rights provides a good source for understanding sustainable development and human rights relationships. The DHRE is an attractive menu of Principles whose actual (but unlikely) implementation would go a long way toward realization of human rights, resource equity ideals and sustainable development goals. The DHRE was reviewed and published in 1995 by the UN Commission on Human Rights,⁶¹ but there is no momentum at the UN toward

⁶⁰ The gathering consisted of 20 experts on the environment and on human rights, including academics, NGO activists, chairs of UN human rights monitoring bodies, and Special Rapporteurs on human rights: McChesney, (1995).

⁶¹ The DHRE appeared as an Annex of a report to the Commission from its Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The content and history of the DHRE is discussed in Boyle and Anderson (1996) and McChesney (1995).

adoption of a final Declaration in the foreseeable future.⁶² Nevertheless the Draft Declaration is useful as a focus for discussion, education and inspiration.

The DHRE proclaims that all persons have the right to a secure, ecologically sound and healthful environment. There are special provisions on the environmental and resource rights of indigenous peoples. The DHRE also lists duties, including toward future generations. These duties apply to individuals, governments, international organizations and transnational corporations.

One of the more detailed sets of rights outlined in the DHRE concerns adequate housing and land tenure, including: the right not to be evicted arbitrarily from land or homes because of decisions or actions related to the environment; an effective role for occupants in negotiations about any eviction; and in the event of displacement, provision of timely and adequate restitution or compensation and/or substituted land or accommodation.

10.1 (b) Selective Summary of DHRE Principles

About two-thirds of the 27 Principles of the DHRE are summarized below, with deliberate emphasis on those portions most pertinent to the present report. Some Principles derive from environmental sustainability ethics; almost all can be cross-linked to international human rights law. Among other tenets, the Principles declare rights "of all persons" to:

- (Principle Number)(2) a secure and ecologically sound environment
- (5) freedom from environmental conditions that threaten sustainable development, life, health, livelihood or well-being
- (4) an environment adequate to meet present needs equitably while not impairing the equitable needs of future generations
- (6) the essential processes and areas necessary to maintain biological diversity and ecosystems
- (13) conservation of nature and natural resources; sustainable, equitable and ecologically sound access to, and use of, natural resources; preservation of "unique sites" of nature, "consistent with the fundamental rights of persons or groups living in the area"
- (3) freedom from discrimination in decisions and actions that affect the environment

⁶² Based on opinions and information obtained from environmental activists, UN sources, and foreign service officers of Canada and other States in March, May and October 1998.

(14) rights of indigenous peoples to control their territories and natural resources, to maintain their traditional ways of life, and to have protection from degradation of the environment in their territories

(7, 8, 9) the highest attainable standards of health, free from environmental harm; and safe and healthful food, water and working environments

(15 and 16) freedom of expression and access to information on the environment that is adequate, timely and not unduly costly, to "enable effective participation in environmental decision-making"

(18) meaningful participation in planning, impact assessment, and decision-making - where consequences for the environment, development or human rights are at stake

(10, 11) adequate housing and land tenure in an ecologically sound environment; freedom from arbitrary eviction linked to decisions or actions affecting the environment; an effective role in related negotiations; and appropriate remedial measures

(12) timely assistance in the event of natural or human-caused catastrophes

(19) freedom of association to protect the environment "or the rights of persons affected by environmental harm"; and effective redress and remedies

(17) environmental and human rights education

10.1 (c) A Partial Follow-Up to the Draft Declaration on Human Rights and the Environment
At its 1995 session, the Commission on Human Rights (UNCHR) appointed a Special Rapporteur to investigate violations of the rights to life, health, etc., caused by transnational dumping of toxic and harmful material. An unsuccessful attempt was made to appoint a Rapporteur on environment and human rights generally. Many industrialized States opposed both proposed appointments, for four reasons: 1. Firms from their countries would be prime targets of the proposed investigations; 2. Sustainable development is already under the aegis of the UN's Commission for Sustainable Development (CSD); 3. There are already international regimes to control transboundary movement of dangerous materials;⁶³ and 4. Examining environmental issues at the UNCHR weakens its focus on core violations such as political killings and suppression of free speech.

⁶³ For instance, pursuant to the 1989 (Basel) *Convention on the Control of Transboundary Movements of Hazardous Wastes*, (1989) 28 657.

Many NGO representatives endorse point 4. It is true that not enough time and resources are available for the UNCHR to deal with even massive personal rights violations. Other NGO activists retort that: 1. The CSD is a political talking shop that is less effective than the longer established, higher profile UNCHR; 2. The regimes for monitoring international shipping and dumping of wastes are not strong, and unlike the UNCHR, do not provide meaningful access for NGO input; 3. Discussing toxic transfers in the UNCHR forum ensures that the *human rights* repercussions are addressed. These discussions underscore human rights issues re health, food, water and discrimination against minorities - in whose localities toxic matter tends to be dumped).⁶⁴

The 1996 and 1997 reports of the Special Rapporteur, Mme Fatma Zohra Ksentini, were largely legal and conceptual. By 1997 she had begun the process of naming the perpetrators of illicit transnational transfers of toxics, as well as focusing more closely on resulting human rights victims and violations. Her mandate was extended by the Human Rights Commission in 1997,⁶⁵ but no further reports appear to be available publicly at this time.⁶⁶

10.2 Environmental, Land and Resource Rights in the Constitution of South Africa⁶⁷

Under section 24 of the Constitution of 1996, everyone has the right to an environment that is not harmful to health or well-being; and to have the environment protected, for the benefit of present and future generations, through measures that: i) prevent pollution and ecological degradation; ii) promote conservation; and iii) "secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development".

Section 24 presents standards that can be enforced through courts, rather than merely guaranteeing a broader but vague environmental right. Procedural rights in the Constitution, such as access to information, should assist in litigation concerning environmental integrity:

⁶⁴ The writer was present at the UNCHR for relevant discussions in 1995, and summarized the issues for a Consultation between Canadian NGOs and the Department of Foreign Affairs and International Trade in February 1996.

⁶⁵ "Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights", Commission on Human Rights Resolution 1997/9, April 1997.

⁶⁶ Searches of UN and other Internet websites, October 1998.

⁶⁷ At <http://www.polity.org.za/govdocs/constitution> as adopted May 1996 and amended October 1996 by the Constitutional Assembly.

"32. (1) Everyone has the right of access to a. any information held by the state; and b. any information that is held by another person and that is required for the exercise or protection of any rights."

The Constitution allows a person to launch litigation for rights infringement "in the public interest", or "on behalf of oneself, a group of persons, or another person who cannot act in his or her own name".⁶⁸ Rights in the Constitution may be subjected to restrictions, but these must be limitations that are reasonable and justifiable "in an open and democratic society based on human dignity, equality and freedom".⁶⁹

From the perspective of equity in resources use, section 25 on property rights is paramount. Key portions are excerpted below:

25. (2) Property may be expropriated only in terms of law of general application

a. for a public purpose or in the public interest;

...

(4) For the purposes of this section

a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and b. property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

⁶⁸ Section 38.

⁶⁹ Section 36 lists factors to consider when assessing the permissibility of limitations. These factors should sound familiar to students of Canada's constitution, being based partly on Section 1 of the *Canadian Charter of Rights and Freedoms* (Constitution of 1982) and on Supreme Court of Canada decisions applying it. (Remarks of Justice Albie Sachs, Supreme Court of South Africa, to the Canadian Institute for the Administration of Justice, Halifax, October 1996.)

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination ...

South Africa's constitutional jurisprudence promises to be vibrant, as the Constitution is innovative, and South Africa has an established legal infrastructure as well as a commitment to overcome the residues of apartheid.⁷⁰ Since South Africa is a leader in Africa and around the South, legal developments there gain wide publicity, and will undoubtedly be used as precedents or persuasive arguments in many countries.

10.3 The New Commitment of the United Nations Development Programme to Integrate Human Rights with Sustainable Human Development

In January 1998, the United Nations Development Programme (UNDP) and Mary Robinson, the UN's High Commissioner for Human Rights, jointly inaugurated a policy document: *Integrating Human Rights with Sustainable Human Development*.⁷¹ The High Commissioner conveyed this thought in her Message:

Human rights bring to the development discussion a unifying set of standards - a common reference for setting objectives and assessing the value of action. The rights approach will enhance the human dimension of UNDP strategies.

In the document, the UNDP promises that "human rights will be mainstreamed in its activities and not relegated only to specific human rights projects". For the purposes of the present report, many other clauses agreed to in the UNDP policy statement are of interest, as these selected excerpts reveal:

⁷⁰ For a wider discussion, see Jan Glazewski, "Environmental Rights in the New South African Constitution", in Boyle and Anderson, 177-197. Note that the Glazewski work refers to the interim Constitution of 1993, though its general observations still hold.

⁷¹ The UNDP website is <http://www.undp.org>, but the document is easier to find through the UN human rights site at <http://www.unhchr.ch>.

UNDP advocates the realization of human rights as part of sustainable human development. Human rights and sustainable human development are interdependent and mutually reinforcing.

..

There is a need to more systematically address and focus the programme's human rights content and dimensions. Specifically, UNDP should develop a human rights-based framework in its antipoverty, pro-sustainable human development work.

..

UNDP's four main areas of sustainable human development programming - eliminating poverty and sustaining livelihoods, promoting the advancement of women, protecting and regenerating the environment, and developing capacity for good governance - all have dimensions pivotal to human rights. Each will benefit greatly from a more explicit human rights approach.

..

Like poverty and gender, the environment has crucial human rights dimensions that a human rights approach can help address (agriculture, forestry, air). For example, environmental laws can help mitigate social conflicts that arise from competition over scarce natural resources (peasants against private forest contractors, squatters against urban residents and developers). Thus, like poverty and gender, the environment has crucial human rights dimensions that a human rights approach can help address. Development must be concerned with protecting and rehabilitating environments and must be environmentally sustainable.

11: CONCLUDING CAUTIONS

This report has introduced major concepts and documents in the human rights and sustainable development fields, indicating significant ways in which these intersect. A central purpose was to provide a background source for IDRC personnel, to assist them in evaluating other information and arguments from the relevant fields. The data and opinions in the report can also be a resource for advocacy.

Being introductory, the report covers only small portions of expanding subjects. Participatory and procedural human rights help to advance other human and environmental rights as well as equity in natural resources use, but the illustrative cases in the report are only indicative of ways that rights can be exercised. Fuller consideration of how principles of human rights, resource equity and sustainability mutually reinforce would require considerably more space.⁷²

⁷² For further guidance, see: Hunt; Boyle and Anderson; Robertson at n.7, *supra*; McChesney at n.8, *supra*; and A. Eide, C. Krause and A. Rosas, eds., *Economic, Social and Cultural Rights - A Textbook* (Martinus Nijhoff: London, 1995) 506 pages.

Four of the case illustrations in the paper involved decisions of international supervisory bodies or national courts, but those fora were steps in a longer process. The paper did not look into other avenues through which procedural rights are exercised, including public education, educating of parliaments and the media, and grassroots organizing. Even if all procedural modes are activated, however, without firm legal rights to land, to resources, or to a sustainable or safe environment, the exercise of civil and political human rights may ultimately prove ineffective.

This report covers many concepts, principles, legal norms and tactics that assist in achieving sustainable development and human security. Having such knowledge does not mean that one can act on it. Awareness of human rights provides tools to help accomplish other worthy objectives; cases abound in which victims obtain remedies for inequity and rights violations only after exercising their civil rights through a media and litigation campaign. Yet in many countries and circumstances, it is imprudent to frame human rights goals in the language of human rights; it is counterproductive and dangerous. One strategy that community-based human rights advocates have used is to work through consumer groups (South-East Asia) or environmental organizations (former Soviet Union), rather than through human rights NGOs. In some societies, using the language of human rights and democracy can politicize legitimate claims in a way that hardens government attitudes. Wary proponents will often choose arguments based on good development practices or established concepts of fairness and dignity. What might be achieved through lobbying or ordinary enforcement of technical regulations is not necessarily more achievable through public campaigns and prominent litigation. Those who promote human rights and sustainable human development objectives must judge which mix of approaches is likely to succeed in a given society and time.

12: PROPOSALS FOR POTENTIAL FOLLOW-UP RESEARCH

Accepting that principles of human rights, sustainability and resource equity are largely synergistic, it seems worthwhile to conduct further research on connections between facets of IDRC work and human rights. One intention of the current study was to generate ideas for related enquiry. As the consultant was engaged to analyze the relevant subject areas in some depth, it is logical for him to draw on that experience and offer concepts for follow-up research. In the proposal outlines presented below, the numbering is for ease of reference, and is not meant to suggest any order of priority.

12.1 Looking at IDRC's Work from the Perspective of Particular International Human Rights Instruments

Specific IDRC activities and policies within the scope of sustainable development, equity in natural resources use and environmental responsibility would be examined in light of one or more human rights instruments, such as:

- *Convention on the Rights of the Child*
- *Convention on the Elimination of All Forms of Discrimination Against Women*
- *International Covenant on Economic, Social and Cultural Rights*

12.2 Human Rights Principles Related to Land Tenure and Equity in Natural Resources Use

A study would examine human rights principles implicated in arrangements that accommodate traditional land tenure and resource rights and/or resolve disputes over land and resources. Arrangements made in different countries would be compared, seeking transferable lessons learned.

12.3 Rights Principles and Projects Developed with and for Indigenous and Tribal Peoples

(a) An area covered briefly in the introductory report would be studied more fully - human rights, sustainable development and resource equity principles implicated in supporting the interests of indigenous and tribal peoples.

(b) A survey of projects involving development cooperation between Canadian and overseas indigenous groups would be conducted, looking for good precedents and lessons learned.

12.4 Focusing on Countries Where IDRC Supports Project Work

At least 140 countries have ratified each of the core UN treaties mentioned in the paper, and all but two nations have ratified the *Convention on the Rights of the Child*. But regional human rights treaties are not ratified by all countries in each world region, and there are many UN treaties with fewer States Parties than the Covenants. Each country in which IDRC supports projects has a somewhat different set of national and international human rights obligations and remedies.

(a) A report would describe the most relevant human rights treaties and declarations that apply in specific countries where IDRC focuses its efforts. The study would include a matrix or chart of ratified treaties and applicable declarations.

(b) Taking the concept a step further, intergovernmental, non-governmental and government sources would be reviewed to find evidence of whether selected states who have ratified

relevant treaties do a noticeably better job of achieving goals in line with IDRC themes, initiatives and priorities.

12.5 Environmental Treaties and Human Rights

The introductory paper explores harmonies among principles of human rights, resource equity and sustainability. It looks at sustainable development declarations, but it does not delve into international environmental treaties, such as those on biodiversity and on forests. A review of environmental instruments could be conducted to show significant links with the human rights instruments covered in the report.

12.6 The 1998 Policy Accord Between the UN Development Programme (UNDP) and the UN High Commissioner for Human Rights

The policy document titled *Integrating Human Rights with Sustainable Human Development* is described in the introductory report. Recognizing parallels between some priorities of the UNDP and IDRC, the new intra-UN understanding would be studied, including its background and implementation. Among questions that the study should address are these: Are there lessons (positive or negative) that could be helpful for analogous initiatives of IDRC? Are there opportunities for worthwhile interaction or joint undertakings between IDRC and UNDP?

12.7 Popular Education on Principles of Environmental Sustainability, Human Rights and Resource Equity

Publications on the interrelationship among principles of environmental sustainability, human rights and equity in natural resources use tend to be academic pieces or thick books. A Manual explaining these links in clear language could be prepared, in partnership with relevant NGOs, to become a resource for NGOs, communities and their allies.

12.8 Human Rights and Successful Human Development

A small number of studies have indicated a positive correlation between respect for human rights and successful human development. A review of these studies would be conducted for IDRC and/or for public education purposes. The research should seek to determine whether one can suggest conditions that are most conducive to positive interaction between human rights implementation and achievement of the goals of development programs and projects. Where there is a lack of complementarity, the study should also underscore such findings.

12.9 Improved Monitoring of the Realization of Economic, Social and Cultural Rights

(a) A study would canvass international efforts to develop positive measures and indicators to show country compliance with rights obligations under the *International Covenant on Economic, Social and Cultural Rights* (health, housing, food, water, education, work, welfare), including participatory monitoring efforts involving community-based groups.

(b) A report would outline international efforts to develop and use a "violations approach" to promote economic and social rights. [The violations approach focuses not on ways to assess gradual implementation of rights, as in (a), but on harsh denial or removal of these rights and on discrimination against women and minorities in the provision of the rights.]

12.10 Internet and Other Information Technology Issues

IDRC is concerned with excellence in knowledge-based development. There are many human rights implications of access to and use of advanced electronic research and communications technology. Conferences and studies on this technology tend to focus on commercial matters. Conferences that have examined human rights issues covered a wide range of issues, including many not firmly within IDRC's purview (such as free speech and combatting of hate messages). A report could highlight human rights issues pertaining more closely to IDRC's work, regarding equitable access to the internet and other forms of information technology, formation and sharing of human rights databases and protection of communications privacy in development and human rights work.

12.11 IDRC Projects and Human Rights

A systematic database review of IDRC projects would be conducted, (selected from existing project abstracts) to show how these involve and promote specific international human rights.

12.12 Examining Links Among Human Rights Principles and IDRC Themes, Priorities and Initiatives

The introductory paper looked at interconnections between human rights on the one hand, and principles of equity in natural resources use and sustainability on the other. A similar approach could be taken in examining links between human rights ideals and other IDRC themes, priorities and initiatives.

(a) For example, peacebuilding generally fosters human rights objectives (leaving aside the question of peacemaking accords that involve impunity for human rights violators). The introductory report did not examine IDRC's peacebuilding work. A future paper could consider how IDRC's peacebuilding efforts conform to and promote international human rights principles.

(b) Or an examination of IDRC's peacebuilding experience could be part of a general paper considering several aspects of IDRC policy and activity from a human rights perspective. The study would look only at subjects relevant to IDRC themes, initiatives and priorities that were not covered in the introductory report.

Selected Sources

Allan E. Boyle and Michael R. Anderson, eds. *Human Rights Approaches to Environmental Protection* (Oxford: Clarendon Press, 1996).

Paul Hunt, *Reclaiming Social Rights - International and Comparative Perspectives* (Aldershot, UK: Dartmouth, 1996).

Allan McChesney, "Is the world warming to environmental human rights?" (June 1992), published as: "A host of tactics are needed to fight for environmental rights", (1992) *Human Rights Tribune* Vol.1, No.2, 14.

Allan McChesney, "Linking Human Rights, Environment and Sustainability" in *Ecodecision: A Sustainable Development Magazine* (Royal Society of Canada), Winter 1995, 75.

"Symposium - Earth Rights and Responsibilities: Human Rights and Environmental Protection" (1993) 18 *Yale Journal of International Law*, 213.

Attachment A: List of International Human Rights Instruments

Regional Instruments Cited in the Report/Abbreviation

African Charter on Human and Peoples' Rights	African Charter
American Declaration on the Rights and Duties of Man	ADR
American Convention on Human Rights	AMC
European Convention for the Protection of Human Rights and Fundamental Freedoms	ECHR
European Social Charter	ESC

United Nations Instruments Frequently Cited in the Report

Universal Declaration of Human Rights	Universal Declaration
International Covenant on Civil and Political Rights	ICPR
International Covenant on Economic, Social and Cultural Rights	ICESCR

Indigenous Peoples' Rights

International Labour Organization Convention 169, Concerning Indigenous and Tribal Peoples	ILO C169
Draft Declaration on the Rights of Indigenous Peoples	IPD
Proposed American Declaration on the Rights of Indigenous Peoples	OAS/IP